Wilk. THE EXACT Howell

Constable

WITH HIS

Original, and Power in all Cases belonging to his Office.

AS ALSO,

The OFFICE of *Church-Wardens*, *Overseers* of the Poor, *Surveyors* of the *Highways*, *Treasurers* of the County Stock, Parish *Clerks*, Governours of *Fairs*, and other inferiour Officers, as they are at this day established both by the *Common Laws* and *Statutes* of this Kingdom.

By *E. W.* of *Grays Inne* Esq;

The Fourth Edition.

Wherein the whole is very much Corrected, and Enriched with large Additions to render it the most Compleat in this kind extant.

Non Nobis solum nati sumus, sed partim PATRIÆ.

LONDON,
Printed for *Hen. Brome*, *Tho. Sawbridge*, and *Tho. Passenger*, 1677.

TO THE

Reader.

THough it may ſeem Actum Agere, a vain and impertinent attempt to load you with this Treatiſe, when others are, or at leaſt have been, abroad, carrying the face of the ſame deſign,

yet we think fit to remind thee (Courteous Reader) that as the first Edition of this present Book, was the first of this nature that was published after his Majesties happy Restoration, so for its briefness, plainness and soundness in what it delivered, it met with no ordinary welcom in the World; witness the several Editions thereof already disposed of.

Where-

Wherefore that ſo uſeful and neceſſary a Guide might not be wanting to our honeſt minded Country men, for their directions in all thoſe Offices whereunto their courſe of life may render them liable, we have not only thought fit to Reprint it, but have alſo very carefully and with much pains reviſed the ſame, in every part ſupplyed the Authorities where they were wanting

ing, and Rectified them where they were misquoted; Illustrated it with a clear and apt Method, and Enriched it with requisite Additions of several sheets; so that we doubt not but it will be found not inferiour to any extant, but rather in many things to exceed whatever has been written on this subject, especially in plainness; wherein all endeavours have been used to suit it to the under-

understandings of the meaneſt Capacities, and yet to ground it on ſuch Authorities by a diligent Collection out of the Book of Statutes, Reports and other Authentique Law Books, that nothing relating to any of theſe Offices neceſſary to be known might be omitted, nor any thing Falſe, Repealed, or Illegal ſhould herein be Inſerted.

And thus, Dear Coun-

Countrymen, I deliver it thus poliſht and Refined into your hands, as a Looking Glaſs wherein you may view your ſeveral Offices in their lively legal Colours and full proportions: That ye may in all ſuch Caſes know your Duties, and knowing them accordingly do them without fear, favour, prejudice, or affection, wherein you ſhall do God much ſervice, your Country much good;

good; and that this may be the fruit of my Labours herein, is the prayer of the Compiler, who has no other design than to cast in his Mite towards establishing the Admirable Government of this Nation, and contribute his Assistance to all those Loyal and Active Subjects who conform to, and Act under, the same.
Farewell.

THE

THE

THE EXACT CONSTABLE, &c.

CHAP. I.

Of the Nature and Original of the Constable's Office, the several Names and Kinds of Constables, and how they differ in Power.

IN all Exact Treatises on any Subject, the Laws of good method require us to begin with the *Etymology* of the word, and *Definition* of the thing intended to be discourſed of; To ſet forth the *Nature, Duty and Power of the Conſtables Office*, is our preſent ſcope, and therefore firſt let us conſider the *Name*.

The Name: (1.) *Skinner* in Etym. Verb. *Constable.*

Constable (in Law-Latin *Constabularius*) some will have so called (1.) *quasi Comes stabuli:* but that seems not to bear any resemblance with the *Nature* of this Office; others more lucky Ghessers think it comes of the Particle *con* and *stabilis*, as being such Civil Ministers as together conduce very much to the *stability* and quiet of the whole Nation: But certainly, 'tis both improbable and vain to hunt for a *Latin* Pedigree for a word no less a stranger to the *Roman* Language than the Office it self to their Government: For in truth both name and thing are Natives of this Kingdom; the Title being compounded of two *Saxon* words (2.) *Cuninge* or *Cinge*, signifying a *Prince* or *King*, and *Stable* (or rather *Staple*) denoting a *Prop* or *Stay*, and so *Conningestable* (by Contraction *Constable*) is as much as to say the *Prop* or *Stay* of the *King*; which suits very well with his place and Duty: For what can more *establish* the Throne, or better *underprop* and support the Government than care to *preserve the Peace* in all places, and *seize* those that attempt to *violate* it.

(2.) Co. 4. Part Instit. fo. 123. *Lambard* fo. 5.

And

And for the better warrant of this Etymology, it is to be noted (3.) That antiently there was a grand Officer of State called *the High Constable* of *England*, to whom this Title was originally given by reason of the great Authority wherewith he was invested, and though afterwards that haughty Office was laid aside, as being apprehended too great and dangerous to be continued. Yet from thence the name is derived to this day, and though divided amongst many, and shining with less lustre and authority; yet still it bears the same Appellation, and some marks of that illustrious Descent. (3.) Lamb. Ibidem St. 13. R. 2. Ca. 12.

As for the time of the first Institution of Constables, 'tis commonly referred to the Statute of *Winchester*, *Ca.* 1. (made in the 13. year of K. *Edw* the First, *Anno Domini* 1285.) Others suppose them erected not till about the beginning of the Reign of K. *Edward* the Third: But in truth it may be said, The Original.

—— *Caput inter Nubila condit*, (4.)

For the Authority by those Statutes (4.) was grounded and granted upon the antient Laws and Customs of this Kingdom. (4.) Vide Bracton. Cases of Tr. p. 22.

Kingdom, practised long before the *Norman* Conquest, and intended and instituted for the Conservation of the Peace, and repressing all manner of Disturbances and hurt to the people.

Wherefore for the better Understanding of the nature of this necessary Office, we must look back and take a view of that policy of our prudent Ancestors, which first introduced it; which was this, when the Heptarchy (or Seven petty Kingdoms formerly in this Island) came to be reduced to one Empire, and pay Allegiance to a single Scepter; For the better Preservation of the Peace, preventing Thefts, and repressing Malefactors, it was agreed and ordained

(5.) Lambar. p. 6. (5.) That all the Inhabitants should cast themselves into distinct Societies by ten men and their respective Families in a Company: And that every of these ten men should be surety and pledg for the good behaviour of the rest: So that if any one of them committed any Crime, they should see him forth coming, or in default thereof be amerced, and thence these several Societies come in some places to

to be called (at this day) *Boroughs* or rather *Boroes* from the Old word *Borhes* signifying pledges or sureties: And in other parts (from the number of ten Families thus associated) Tithings. And such as were of Ill Credit, and could not get themselves accepted in some such *Boroe* or Tithing were to be esteemed dangerous persons, unworthy of Society, and where-ever they were apprehended, as Vagrants to be secured in Prison.

And as ten times ten amounts to an hundred, so ten of these smaller Companies being joyned, and at certain times meeting together on business of importance concerning them all; such general Assembly or Court and the precinct thereunto belonging came to be called a *Hundred*, and retains the same name to this day;

Likewise it being often necessary for each of these Tythings or *Boroes* to chuse and prefer one of their number to act and speak for, and on the behalf of them; All such person was therefore in some places called, the *Boroes Ealder* (whom to this day in *Kent* we call *Borsholder*) in other places the *Boroe*'s head or *Headboroe*, and in

some, the chief pledg which explains both the other names; for all three are of one Signification.

Tything-men, &c. compared with Constables.

Now as touching the Office, that these *Borsholders* Tythingmen, Headboroughs, and chief Pledges had, it was after a sort, and is still, where they remain, in effect the same with the Office of a Constable of a Town or Parish, which seems afterwards to be establisht upon a greater Increase of Inhabitants: for as after the division of the Land into Shires or Counties, the Charge of the whole County was primarily committed to the Sheriff; but as the people grew more numerous, it being found too much for one Officer to inspect and govern so many; therefore in every Hundred there was one ordained with Authority to keep the Peace, who was called the *High-Constable*; so afterwards the multitude being still augmented, for better assistance there came likewise to be one such *Conservator* of the Peace annually appointed in every *Boroe*, whom by reason of the smalness of his Precinct (for his power therein is as great as the High-Constables) they called, *the petty Constable*;

stable; Yet some maintain, That the Office of Constable is essentially distinct from those of Tythingman, Headboroe, *&c.* Concerning which it is our humble Opinion, That these Tythingmen, *&c.* if they happen to be in a precinct, where there is also a Constable, there such Constables are the Head-Officers, and they are but as Assistants to the Constable when he is present, but are to attend the Service in his absence: And where there is no Constable but only such Tythingmen, *&c.* Then (6.) they are the only Officers for the Peace Execution of warrants, *&c.* Or where a Statute impowers them by name as well as Constables, or orders any thing to be done by the *Constable or other inferiour Officer*, in such Cases and things their Offices and Authority are in a manner one and the same (*mutato nomine*) with that of Constable; so that upon the whole matter, all these Officers may seem fitly enough to be comprehended in this one word Constable, and all their Offices to fall in with, and be contained under, that Office. And accordingly for avoiding tediousness and an impertinent Clutter of

(6.) Vid. Dalton J.P.C. 1. p. 4. St. 1. Jac. C. 7.

words, we shall handle them promiscuously in this Discourse.

Definition. From what hath been said, we may safely affirm with Mr. *Lambard*, *That a Constable is the Kings Majestys immediate Officer, for the support and maintenance of the year within his Franchise:* Or perhaps more properly, *That he is a Civil Officer appointed for the maintenance of the Peace, and putting in Execution the warrants and precepts issuing out of Court Leets, from Justices of the Peace and Coroners within the precinct or Liberty for which he serves.*

Two Kinds. Of Constables (as hath been intimated) are two sorts, High-Constables and petty Constables, the first are for the whole Hundred, the last only for some particular Parish, Village, Hamlet, Tything, Borough, or Liberty, yet (to use the words (7.) of the learned Sir *Francis Bacon*) though the High-Constables Authority hath the more ample Circuit, I do not find that the petty Constable is subordinate to him for any Commandment, that proceeds from his own Authority: But it is used, That the warrants and precepts of the Justices be

(7.) C.T. p. 22. and 30.

delivered

delivered unto the High-Constables, who being few in number may better attend the Justices, and then the High-Constables by vertue of such warrants (not their own Authority) make their precepts over to the petty Constables: And therefore I doubt the High-Constable was *ab origine*, but when the busines of the Country encreased, and the Authority of Justices of the Peace became encreased by divers Statutes, then for conveniences sake the Office of High-Constables grew in use for receiving the Commands and Precepts from the Justices and distributing them to the petty Constables as aforesaid: And in Token of this the Election of High-Constables in most parts of the Kingdom is by the appointment of the Justices of the Peace (most usually at their General quarter Sessions, or sometimes at petty Sessions in their several Divisions) whereas the Election of petty Constables is by the people.

CHAP.

CHAP. II.

Where Constables are to be chosen, who are lyable to serve that Office, and who not, with the Form of their Oath.

Sr. Win. Dalt. J.P. Chap. 16.

THE High-Constables (as hath been hinted) are usually chosen at the Quarter Sessions, and do commonly take their Oaths there, or may by warrant thence be sworn before one Justice of Peace elsewhere, and in the same manner may they by the Sessions be removed, and others put in their places.

Two Justices of the Peace the one being of the *Quorum* may appoint High-Constables in *Wales* by a special Provision of the Statute, 34 *H.* 8. *Ca.* 26.

But the Choice of the petty Constables doth most properly belong to the Leet, where sometimes they are elected by the Steward himself by Custom; but more frequently and regularly by the Inquests Presentment; yet they may also in some Cases be chosen

sen by Justices of Peace in their quarter Sessions, and as the Custom of the place is, and that (as some say) for one or two years But the sounder opinion is, That this Office in its own nature is annual, and therefore when a man has served a year upon his Complaint to the Quarter-Sessions they ought to remove him and appoint another; the Oath is commonly administred to these petty Constables where they are chosen, or they may take it before a Justice at another time. Bac. pag. 25.

By a late *Stat.* of the 14. *Car.* 2. *Ca.* 12. It is ordain'd, That upon the death or removal of any Constable out of the Parish, any two Justices may elect and swear a new one to continue till the next Leet or Quarter Sessions, and then the Steward or Justices to chuse another, or confirm him that is in; and if any such Officer shall continue in his place above a year, the Justices may discharge him and appoint another, till the Lord at his Leet shall place one to supply the Office.

But in other Cases Justices of the Peace are not to meddle in the chusing of a Constable either in Sessions,

or

or out of Sessions, where it hath time out of mind been used in a Court Leet, unless there hath been some neglect or misgovernment in the said Court; and in such Cases the Kings Bench is to decide the difference: If any Justice shall intermeddle to remove a Constable that hath been chosen by the Leet, the Leet may put him in again: for there hath always been a question of the Justices power herein, as you may read *Trinity 9. Jac. Banco Regis*, and in *Stiles* Reports 362. But it hath been agreed by all the Justices, That if the Leet do not chuse a fit man Constable, or neglect to give him his Oath, or doth any unlawful Act in the chusing him, the Justices may chuse and swear another, *Mich. 22. Car. Banc. Reg.*

Vid. Bulstr. Rep. 1. Part f. 174.

It is said, That if Leets chuse unable or unfit men for petty Constables, it is a cause of forfeiture of such Leet, and the choice void, *Co.* 8. 42.

And therefore in the next place let us see, who are fit and bound to serve this Office, which we shall set down first *negatively*, secondly *affirmatively*.

1. Not Divines, Justices of Peace, Attor-

Attorneys at Law, Physicians in respect of their necessary Attendance elsewhere, neither Women, (whether Maids or Widows though house-keepers, and dwelling in houses, whose Inhabitants used to serve) Mad-men, Infants, old decrepit persons, nor poor people; none of these are fit for, or compellable, to be made Constables.

2. *Affirmatively*, Every person chosen Constable ought to be *idoneus homo*, that is to say, a man apt and fit for the Execution of the said Office, which word in the intention of the Law, implies these three necessary Qualifications.

1. Honesty, one that will execute his Office without malice or partiality.

2. Knowledg, one that hath in some competent measure skill to understand his Duty, and what belongs to his place; and therefore an Infant, Person *non sanæ Memoriæ*, or Idiot cannot serve.

3. Ability as well in wealth as body, that so he may spare time, and attend the Execution of his Office diligently; wherefore it was wont to be

be given as a special direction from the King to chuse of the ablest of the Inhabitants as to Estates, which if duly observed would be a great furtherance to the course of Justice throughout his Majesties Dominions; for poor indigent persons, when chosen Constables, either are ignorant, what they may, and should do, or are over-awed by their richer neighbours so as for fear to balk their Duties, or else are not able to spare time to execute their Office, as is required by Law; For 'tis to be understood, That Constables have no allowance, but are bound to perform their Offices *gratis*, which may the rather be endured by men of indifferent Substance; because it is but for a year, and that they are not tyed to keep or maintain any Servants or under-ministers, but every one of the Kings people are bound to aid and assist them.

Bacon p. 25.

Where one is under one and twenty years of age (till which time he is an Infant in the Language and Consideration of the Law) he shall not be compelled to serve, nor an old man above seventy, but may sue out his

Writ

Writ *de non ponendis in Assisas & Jurat. Vide Fitz. Herb. Nat. Brev.*

Likewise the Kings Majesties Servants in Ordinary are priviledged, because they are always supposed to be Attendants upon his person in his Court or Affairs, *Vid. Resolution of the Judges* 1633. But whether a sufficient person that gets himself sworn a Servant extraordinary, but lives constantly at home, and scarce ever does any actual Duty, shall be exempted from this Office, is doubtful.

The Members of the Colledg of Physicians, *London*, are priviledged by their Charter and special Statute, and so also ('tis said) are the Corporation of Parish-Clerks of the said City; and if any of all these be chosen they may be removed by order of Sessions or by Writ, or a Warrant from the King to the Sheriff of the County, and the High-Constable of the Hundred of which see a President in *Dalt. J. P. fol.* 322.

So much for the person, but now as to that respect, which makes him liable to serve in this or that particular Tithing, concerning which note,

That

That a man is to serve this Office in respect of his personal abode, Residency or Habitation, and not in respect of his Lands: For if he keeps house in one place, and here an estate in another, he must serve where he lives, and not where his Estate lies, but if that Estate have a Tenant in it a sufficient man able to serve the Office, he may be chosen and made to serve it (even though the Landlord at the same time be in the same Office in the precinct, where he dwells) For they become capable both of serving in different respects, but the Landlord himself cannot be chosen to serve for that Borough or Tithing wherein his Land lies, though in his own hands, if his dwelling house be out of it; For perhaps (whether it be so or not 'tis no matter, the Law reasonably supposes it may so happen) he may be chosen to this or some other Office in the place where he lives, and a man can do service with his body but in one place at one time.

Yet if the Case be so, That a man hath two several houses in two distinct Leets, and do live sometimes at

at the one house, and sometimes at the other house, in this place he may be made an Officer at either of the Leets, within which he shall be dwelling, when the Leet is kept: And the next year if he be removed to his other house, he may also be chosen there too: For a man may do Corporal Service well enough at two places at several times.

But if two Tithings be both within one Leet, and one man hath houses in both the Tithings, in this Case it seems doubtful whether, though he live in the one Tything, he may not be compelled to serve in this Office for his House in the other Tithing, especially if it be near, and he keep no Tenant in his house fit to bear the Office:

Hence it appears, That a Custom that the Office of Constables should follow the houses, or that two or three in a Tithing or Town should execute the same always, is not good nor according to Law, though formerly practised in some places. Cro. Rep. 1. Part. f. 283.

But if any fit person (not exempted or priviledged as before) be lawfully Dalt. Co. 16. B. 18.

Crawlys Case 1. Part of Croo. Rep. f. 409.

fully chosen to the Office of Constable in a Leet, and refuse to take the charge thereof upon him: he may for such his contempt be fined in the same Leet; or if he be chosen at the Sessions, or by two Justices out of Sessions, and shall afterwards refuse to be sworn, he is to be bound over to the next Assises or Sessions of the Peace, and there indicted, fined and imprisoned.

Yet note, a Constable may make a Deputy, for else how should the place be supplyed in case of Sickness or other exigency: But if there be negligence or misdemeanour committed by the Deputy, the Constable elected shall be answerable for the same: But in Case the first, when chosen, desire to have a Deputy, and name a fit person, who accepts thereof, and is sworn into the place, here the Deputy shall answer for himself: And of this kind are our hired Constables, frequent in and about, *London*; yet it has been delivered for Law by the Judges, That this is practised rather by Toleration than Law.

We shall conclude this Chapter, with

The

The Form of the *Constables* Oath.

YOU shall well and truly serve our Soveraign Lord the King [And the Lord of the Mannor, *when sworn at a Leet*] *in the Office of a Constable, and shall see the Kings Peace to be well and truly kept to the utmost of your power, you shall arrest all such persons as in your presence shall ride or go armed offensively, or shall commit or make any Riot, Affray or other Breach of the Peace, you shall do your best endeavour upon Complaint to you made, to apprehend all Felons, Barretors or Rioters or persons riotously assembled, and if any such Offenders shall make resistance with force, you shall levy* Hue and Cry, *and shall pursue them until they be taken, you shall do your best endeavour, that the watch in your Town be duly kept, and that Hue and Cry be duly pursued according to the Statute, And that the Statute made for punishing of Vagabonds, Rogues and Night-walkers, and such other idle persons coming within your Liberties be duly put in execution, you shall have a watchful Eye to such persons, as shall manage*

or

or keep any Common house or place, where unlawful Games are used, or such as shall frequent such places contrary to the Statute: And you shall have a care for the maintaining of Archery, at your Assises, Sessions or Leet, you shall present all the offences, contrary to the Statutes, made and provided for the restraint of inordinate haunting and tippling in Inns, Taverns and Alehouses, and other victualing places for the repressing of Drunkenness and profane Swearing; you shall true Presentment make of all Blood-shedding, Affrays, Out-cries, Rescues, or other Offences, committed or done against the Kings Peace within your limits; you shall well and duly execute all precepts and warrants to you directed from the Justices of Peace and others, who have Authority in this County, you shall well and truly, according to your knowledg, power and ability, do and execute all other things belonging to the Office of a Constable so long as you shall continue in the said Office.

So help you God.

Or

Or more briefly the Oath, is sometimes Administred, thus

YOU shall swear, That you shall well and duely execute the Office of Constable *(or Tythingman) for the Parish (or Tything) of S. for this next year (or half year as the Case is) and until another be sworn in your room, or you shall be legally discharged thereof;*

So help you God.

CHAP. III.

The Authority of Constables distinguisht, and the Power he hath by the Common Law declared.

THE Authority of Constables, is either substantive and of it self, or substituted and adstricted to the Warrants and Commands of the Justices

Justices of Peace, or as others divide it; it is either Original given them by the Common Law, or additional, annexed by diverse Statutes;

As for the latter sort, *viz.* the subordinate power, whereby Constables are to execute the Commands of the Justices, or likewise the additional power given them by divers Statutes, the same, being very large, and of things of diverse dispersed natures, created by the Branches of many Statutes, we shall hereafter set forth the same under proper and distinct Titles, and in this Chapter, shall only handle the original and substantive power of a Constable, which may be reduced to three heads,

1. For matter of Peace only.
2. For matter of Peace and of the Crown.
3. For matter of Nusance, Disturbance and Disorder, although they be not accompanied with violence and breach of Peace.

1. Constables (under which name I here understand Borsholders, Tithingmen, Headboroughs, *&c.* for what is said of the ones Office may in

in this respect be regularly said of the rest) within their several and respective Towns, Liberties, and Precincts are *Conservators of the Peace* (1.) *virtute Officii* by the very nature of their Office: Now in Law this is said to be *Breach of the Peace*, when any person uses injurious force or violence against the person of another, his Goods, Lands or other Possessions, either by menacing words or threats, furious gestures, force of the body, or any other unjust force used to terrifie him, whom it is directed to; And therefore the Conservation of the Peace consists likewise in three things.

(1.) Bro. f. 127. Tit. Affray. Dal. Just. Peace. Ca. 3.

1. In preventing and foreseeing that nothing to be done, that tends directly, or may probably be an occasion or means of violating the Peace.

2. In quieting and pacifying those that are actually in breach of the Peace.

3. In punishment, such as have already broken the Peace.

A Constable for preventing that nothing be done against the Peace, ought to stop all such persons, as go or ride

Stat. North. 2 Edw. 3. Ca. 3.

ride unlawfully arm'd, and to take such their Armour from them, and commit them to the Goal.

He may take or arrest suspected persons, which walk in the night and sleep in the day, or which do haunt any House, where there is suspicion of Bawdry, and carry them before a Justice of the Peace to find sureties for their good behaviour; for though the Constable may do what he can to secure the Peace, yet he cannot of himself take Surety of the Peace of any man: for it must be either by Recognisance, or Obligation; and how can he take a Recognisance, who is no Officer of Record, and if he take surety by Bond, the question is how it shall be certified, and into what Court? Some are of opinion, he may do it by Bond sealed to the use of the King, and transmitted into the Exchequer or Chancery, whence Process should be awarded to levy the Debt, if the Peace were broken: But my Lord *Anderson* declared, that the Constable ought not to meddle therewith, but only to apprehend the Offenders, and carry them before a Justice to find Sureties for

Crompt. 6.12 H. 7.f. 18.a.

Skarrets Case Trin. 35. Eliz. in B. C.

for the Peace there, which at this day is the most general and safest course;

For pacifying Quarrels begun, the Constables may upon hot words given, or violent likelyhood of breach of the Peace to ensue, command them in the Kings name to keep the Peace, forbear and depart; And if any shall actually make an Affray in the presence of the Constable, Headborough, *&c.* or threaten to kill or beat another, or shall be in a fury ready to break the Peace, such Officers in any of these Cases may commit the Offenders to the Stocks, or some other safe Custody for the present (according to their Quality) until such time as he can carry them before a Justice, and upon their refusal to give Surety may commit them to the Goal; 3 H. 4. 9. 10.

If a Constable be negligent in his Office when he is sent for to part an Affray, or doth not use his best endeavour to part them, this being presented by the Enquest at the Sessions of the Peace, such Constable may be fined for it; And if they have committed or caused any to be bound over for breach of the Peace they must attend the Goal Delivery or Dalt. p. 33.

Seſſions of the Peace to declare the Offences for which they were ſo bound over or committed.

Crompt. 146. Dalt. Ca. 8. A Conſtable going to Arreſt any that has made an Affray, may juſtifie his breaking open the doors, and if he flie may in freſh purſuit follow him not only out of his own Liberty, but even into another County, and if he overtake him in his own County has ſtill in this caſe only as much Authority to arreſt and carry him before a Juſtice, as if he had taken him in his own Precincts, But if he be got into another County the Conſtable can purſue there but as a private man, and muſt get a Conſtable of that County to aſſiſt him, and carry him before a Juſtice there, and commit him (if the Caſe require it) to the Goal of the County where he ſhall be found.

Note, it is properly no Affray, unleſs ſome Weapons are drawn, or ſome ſtrokes ſtruck, or threatned to be given, or ſome attempts to that purpoſe by menacing geſtures or the like. And therefore meerly for opprobrious or hot words the Conſtable may not lay hands on them, unleſs they

they threaten to kill, hurt or beat one another, and then he may seize them to find Sureties to keep the Peace; and where two persons be a fighting, though no hurt done, he may apprehend them to find such Sureties; but if any person be dangerously wounded, the Constable ought to arrest those engaged in that Affray and carry them to a Justice who is either to Bail them till the next Goal Delivery, or commit them, till it be known how it will fare with the party: for in case he dies within a year and a day the Fact is Felony; Bro. Faux Impr. 6. Dalt. Ca. 8. Kitchin. fo. 68.

For punishment of breach of peace past, the Law is very sparing in giving any authority to Constables because they have no power Judicial but Ministerial, and the use of his Office is rather for preventing or staying of mischiefs, than for punishing of offences; for in that part he is rather to execute the Warrants of the Justices, or when suddain matter ariseth upon his view, or notorious circumstances to apprehend Offenders and carry them before the Justices and only to Imprison in cases of necessity where

the Case by reason of circumstances (as Night, danger of Rescue or the like) will not allow the present carrying before the Justice; And therefore note, that after an Affray is over, the Constable coming without a Warrant cannot arrest the Affrayers except some person amongst them be in peril of Death by hurt there received, yet before the Fray begun, and during the time thereof, he may arrest them without Warrant.

38 H. 8. Bro. Faux Impr. 6.

The Second part of the Constables Substantive Office, or things he may do by his own Power, relates (as we told you) *to Matters of the Crown, And consists chiefly in Four parts.*

1. Arrest, 2. Search, 3. Huy and Cry, and the 4th Seizure of Goods.

All which a Constable may perform by virtue of his Office, without any Warrant from the Justices.

1. For first, If any Man will lay Murther or Felony to anothers charge,

or

or do suspect him of Murder or Felony he may declare it to the Constable, and the Constable ought upon such declaration or complaint to carry him before a Justice, and if by common voice or fame any man be suspected, the Constable of duty ought to Arrest him and bring him before a Justice to be examined though there be no other Accusation,

2. If any House be suspected for receiving or harbouring of any Felon, the Constable upon complaint or common fame, may Search.

3. If any fly upon a Felony committed, the Constable ought to raise Huy and Cry to take him, and in the mean time to seize his Goods, and to Inventory them in the presence of honest Neighbours.

The last Branch of this part of a Constables Office, as we said, refers to Nusances & Disorders though not accompanied with violence & breach of the Peace. Which matters of Common Nusance & greivance are of a very variable Nature, according to the several Comforts which Mans Life and Society requireth, and the Contraries which infest the same.

Nusances. Bacons Cases. p.28.

In all which, be it matter of corrupting Air, Water or Victuals, or stopping, straightning, or endangering Passage; or general deceits in Weights, Measures, Sizes, or counterfeiting Wares and things vendible; The Office of the Constable is to give (as much as in him lies) information of them, and of the Offenders in Leets that they may be punished: But because Leets are kept but twice a year, and many of these things require present or speedy remedy, the Constables in things of notorious and vulgar nature, ought to forbid and repress them in the mean time;

General

General Observations most necessary to be known concerning Constables, Tything-men, Headboroughs, &c.

1. All the Cases herein before or afterwards declared touching the Office and Duty of these Officers must be so understood as to Authorize and charge them within their own Limits and Precincts only for which they were chosen, and no further, For although they are bound to look to the Peace, suppress Felons, Execute Justices Warrants, and the like, yet all this is meant within their own Hundreds, Parishes and Tythings, only within which alone they have Authority and power, unless in the special Case of pursuing an offender that flies from them out of their own Liberties, carrying a Malefactor to the next Justice, or to the Goal or the like, for otherwise, out of their own Precincts they have no more Authority than a private man, nor are they there bound to do any of the things appertaining to their

The precincts of the Constables Office.

Office, any more than any other man is.

Refusal to Aid him. Broo. Tresp. 431. Dalt. 303.

2. These Officers generally in the execution of their office, when need is, or any resistance or danger is apprehended, may charge so many of their Neighbours, or others of all sorts of able men as he shall think meet to Aid and Assist them, and if any person shall refuse or neglect so to do, he may be fined and imprisoned for it at the Quarter Sessions;

Breaking open Doors. Dalt. 175. Coo. 5. 92. 13 Edw. 4. 9.

3. Though every mans House be esteemed his Castle and great respect be given it by the Law, yet these Officers if they cannot otherwise get in, may justifie the breaking open a mans House in these Cases following; To search after or Arrest any person for Treason, Murder, Felony or suspicion of the said Crimes, that is, or is probably thought to be in the House; To take a man that hath dangerously wounded another and is fled into the House, to appease a Fray that is in the House, especially if there be any cry of Murder, to apprehend a Popish Recusant upon a Warrant to break open the House, upon a Warrant to take a Conventicle where they

they ſhall be informed one is held within, to ſeize the perſons met, by the Stat. 22 *Car.* 2. *Ca.* 1. But to levy the Fines aſſeſſed on perſons preſent at Conventicles they cannot juſtifie breaking open Doors, ſeveral both at *Kent* and *Eſſex* Aſſiſes having been ſued thereupon; likewiſe in the day time they may force into any Houſe upon a Warrant to ſearch for uncuſtomed Goods by the Stat. 12 *Car.* 2. *Ca.* 19. and 14 *Car.* 2. *Ca.* 11. And generally in Caſes where the Kings Majeſty is immediately concerned or has any Intereſt. But in all theſe Caſes the Officer before he does break open the Houſe muſt ſignifie the cauſe of his coming, and require the Door to be open'd.

Reſiſting Conſtables.

4. Tis very dangerous to oppoſe or hinder theſe Officers in the performance and execution of their Office. For to kill one of them is wilful Murder certainly puniſhable with death, though he that did it, had no real intent nor deſign to kill him, yet the Law conſtrues it Murder becauſe againſt a miniſter of Juſtice; to beat or wound any ſuch Officer in the doing of his Office is a great Treſpaſs

Coo. 4. 40. 9. 96. Broo. Treſp. 295. Dalt. 297.

not to be recompenſed without conſiderable damages; and even otherwiſe to abuſe him in doing of his office as aforeſaid with reviling Language is a miſdemeanour that may cauſe the Offendor to be bound to his Good Behaviour.

As the Law thus protects her Officers, ſo it no leſs diſfavours thoſe that ſhall oppoſe them. And therefore if the party that is to be Arreſted ſhall make reſiſtance, aſſault the Officer, or any of his Aſſiſtants, or labour to make an Eſcape, the Officer may juſtifie the beating, yea and the wounding him alſo, and if it be upon a Warrant to arreſt one indicted of Felony he may juſtifie the killing him, if he cannot otherwiſe take him, or if being taken he reſiſt or flie.

Judges Opinion. 5 Car.

7 Jac. Ca. 5. 21 Jac. Ca. 12.

And for their further indempnity in the lawful execution of their Offices it is provided by ſpecial Statutes, That if any Action, Bill or Suit, as Treſpaſs, falſe Impriſonment or the like ſhall be commenced or brought againſt any Conſtable, Tythingmen, Church wardens, Overſeers for the Poor, and other Officers there particularly named, or any of their Aſſiſtants

ſtants, for or concerning any matter or Cauſe, by them or any of them done, by virtue of their, or any of their Offices, or by any perſons in their Aid and Aſſiſtance, or by their commmandment.

1. That every ſuch Action or Suit ſhall be brought and laid within the County where the Treſpaſs or Fact ſhall be done and committed, and not elſewhere.

2. That all ſuch Officers and their Aſſiſtants may plead the general Iſſue, *Not guilty*, to all ſuch Actions, and give the ſpecial matter in evidence.

3. That in all ſuch Caſes where the Verdict paſſeth for the Defendant, or the Plaintiff is *Nonſuit*, or diſcontinues his Suit, theſe Officers ſhall be allow'd double Coſts to be recovered, as other Defendants to recover their uſual Coſts.

CHAP.

CHAP. IV.

How Constables are to discharge their Duty in Relation to Warrants sent to them from Justices of Peace.

HItherto we have spoken of the Constables Office as 'tis Substantive, and of it self, we come now to consider it as the same is substituted and adstricted to the precepts of the Justices; for which,

Dalt. 2. 1. 1. Note, That these Officers must with all respect receive the Warrants of the Justice of Peace. For if a Warrant be directed and brought to one of these Officers, and he shall shew any neglect or contempt of it, as by flinging it into the dirt, &c or do not with all care, secrecy, and diligence execute the same, these are misdemeanours for which he may be either bound to the good Behaviour, or be indicted and fined: And by (*i*) 27 H. 8. Ca. 5. a special Statute (*i*) there is a great charge laid upon the Officers within the several Counties of *Wales*, That they

they be careful to execute the Warrants of Justices of the Peace there.

2. The Officer must well consider what he goes about, for though it be true that he is not obliged to question, nor may he dispute the Authority of the Justice, or legality of his Warrant in things belonging to his Office. For if the Justice mistake and go beyond his Authority in the manner of proceeding, in a Case wherein, for the matter, he hath Cognizance: As if he send a Warrant to him to Arrest any man for the Peace or good Behaviour without any Cause, or to take a man for a Felony when none is done; In these and the like Cases the Officer is bound to execute it, and shall be excused therein. But if the matter about which the Warrant is, be such as is out of the jurisdiction of the Justice of Peace, I mean, wherein he is no Judge. As if he send his Warrant to the Constable to levy of the Goods of *T. L.* Ten pounds debt which he doth owe to him or to another person; and all this appears by the Warrant it self. In this and such like Cases it is agreed, That the Officer may refuse to Execute it, and

How far bound to obey Warrants.

and may not without danger obey it.

And here we must distinguish between things apparent, and things concealed, between smaller and more great and notorious mistakes: As if a Justice send a Warrant to levy of a man Ten pounds because he hath sworn an Oath, or to sell the one half of the Goods of a man convict before him for swearing four Oaths, when perhaps the Goods are worth an Hundred pounds, or send a Verbal Warrant only to one that is absent (for if he be in his presence 'tis good) or send a Warrant to the Constable requiring him to do something out of his Precincts: In these and the like gross Cases the Constable is not bound to obey, nor shall he be excused if he do it. But if the Justice, where he hath power to send a man to prison after ten days, from such an offence or default, grant a Warrant to send him to Prison before the ten days are out; or, if when by some Acts of Parliament, he is directed to send a Warrant under his Hand and Seal, He send it only under his Hand; or where he is to direct it to the Constable

In some Cases.

ble and Church-wardens, he send it to the Constable or Church-wardens, &c. In such petite mistakes, it seems reasonable, the Officer should notwithstanding Execute it, and be excused therein; wherefore my Advice to Officers is, to consider well of the Warrant, and if they find the thing required to be done, be nothing but what is ordinary, and hath been used to be done by such Officers; then to do it. But if it be to do any thing unusual, new and extraordinary: That then, without any contempt and stubbornness, they endeavour to be well advised before they do it; though at this day theCommissions for the Peace in each County are fill'd with such discreet, judicious, and intelligent Gentlemen, that we conceive such a Warrant absolutely defective, or dangerous, for the Officer to execute, will rarely, if ever happen: however, for these things, See *Coo.* 10. 76. 6. 54. 14 *H.* 8. 16. *Bro. Faux. Imprisonment.* 8.

3. If any Officer arrest any man under pretence of a Warrant, he ought to have his Warrant first, and directed against the right person. For if

if he Arreſt firſt, and bring the man to the Juſtice, and then get a Warrant to do it: ſuch Arreſt is falſe Impriſonment; and the ſubſequent Warrant, though Antedated, ſhall not make it lawful; likewiſe if a Warrant be intended againſt *J. K.* (who is the Delinquent) but be ſent againſt *H. C.* another man, in this Caſe the Officer cannot arreſt *I. K.* by an averment of the intendment, but muſt Arreſt *I. D.* For he is bound to follow the expreſs words of his Warrant, and not to exceed it, for that may be dangerous; yet this is to be underſtood, *cum grano Salis* with diſcretion, *viz.* That when any thing is commanded, all that doth neceſſarily conduce to the performance thereof, and without which it cannot be done, is commanded alſo. And therefore ſo much may be done, although not expreſly ſet down in the Warrant.

Verbal Warrant.

4. A Warrant from a Juſtice of Peace by word of mouth, is as good in ſome Caſes as a Warrant in writing. As if a *Riot*, or other breach of the Peace happen in his preſence, he may by word of mouth command the

the Officers or any others, to Arreſt the Offenders to find Sureties for the good Behaviour in the firſt, or for the Peace in the laſt Caſe, and if they refuſe to put in ſuch Sureties, he may likewiſe by word of mouth, command to convey them to the Goal; but in other Caſes his verbal Order to an Officer for offences committed out of his preſence, is no ſufficient Warrant. And if he ſend an Order by meſſage only, to an Officer to Arreſt a man, and carry him to Goal, the Conſtable may lawfully refuſe it.

Shewing the Warrant. Coo. 9. 69. Dalt. 28.

5. A Conſtable or other publick ſworn Officer (although he be not known to the party Arreſted) needs not to ſhew his Warrant to the party, when he comes to ſerve it upon him, although he demand it. But otherwiſe it is, when one that is no Officer ſhall Arreſt a man on a Juſtices Warrant; for he muſt ſhew his Warrant. And the ſworn or known Officer alſo muſt upon the Arreſt declare the Contents of the Warrant to him. And note, that a Conſtable, or the like Officer gives ſufficient notice what he is when he ſaith to the party—— *I Arreſt you in the Kings Name* (for

(for those words are an Arrest in Law, although he never lay hands on him) and the party so Arrested must at his peril obey, though he know him not to be an Officer, for if he have no lawful Warrant, he has his remedy by Action of false Imprisonment against him. These Officers having apprehended any person ought to be very vigilant to keep him safe, and prevent Escapes, especially if the Arrest be for matter of Felony: for there an Escape suffer'd voluntarily is Felony in the Officer: and whatever the cause of the Arrest be; and be the Escape suffer'd either voluntarily, or involuntarily and by negligence, if the Officer do not take the prisoner again by a fresh pursuit after him, he shall be fined for it according to his Offence, at the discretion of those that shall be Judges of the Cause who (I must tell you, lest any man should flatter himself with hopes of coming off at an easie rate) have power to set his fine to the value of all his Goods, if they think fit; nor is this hard or unreasonable, since these Officers going about their duty may command and take what Assistance and

Escapes.

and help they please. And note, that if an Officer take a man upon a Warrant, and lets him go, taking his word that he shall come to him such a day, to go before the Justice, and the party come not; this is an Escape in the Officer for which he may be punished; nay it seems the Officer cannot now Arrest him upon his former Warrant, but must procure a new one. But if the party do make an Escape of his own wrong, without consent of the Officer, there the Officer on the same Warrant, on a fresh pursuit may take him again, although he were got out of his sight, or even out of his Liberty, as before was shewed in the former Chapter.

7. Although these Officers (as by what we have said appears) have power in divers Cases to Imprison or carry to the Goal, yet when the party by them committed is actually in a Goal or Prison, they have not power in any Case to set him at liberty again without carrying him before a Justice, or other due Process of Law, yet is not this so rigidly to be understood as the City-Constables generally conceit, who

who hold that if a person be taken in the night on their Watch, who possibly gives disobliging Language, and thereupon the Constable says to some of his Watch-men —— *Carry him to the Counter.* Now they maintain that after these words pronounced, the Constables on the parties submission, or proof of his being a civil person, or other inducement whatsoever, cannot call him back or discharge him, though he be not yet actually in the *Counter*, which seems a very vain and groundless opinion. For if an Officer in case of an Affray shall only put the Affrayors apart into the Stocks, or into some House or Room, until the heat be over, 'tis agreed in this Case, the Officer may of his own head set them at liberty again, *Ergo a fortiori* in the other Case.

8. There is a like mistake, that a person on a General Warrant may chuse what Justice he will go before, which is not only against Law, but sense, that the Election should lye in the power of the Delinquent, or that the Officer should be obliged to wait on him at his pleasure; but he may carry him to what Justice he himself thinks

thinks fit, yet if the Warrant run only *To bring him before me* (without adding, or any other of his Majesties Justices) then the Constable must carry him to the same Justice that granted the Warrant, and not elsewhere;

Lastly, Note, that every person committed to Goal, ought to bear his own Charges to be levied (*) of his Goods and Chattels on a Warrant to that purpose to be granted by the Justice; but if he have not Goods, then the charge of conveying him is to be born by the Parish where he is apprehended, by an indifferent Assessment made by the Constable and Church-wardens, and two or more of the Inhabitants, and allowed of by a Justice of Peace; and as for the Goaler he is bound to receive the Prisoner freely, without taking any thing of the Officer that brings him. (*) St. 3. Jac. Ca. 10.

CHAP.

CHAP. V.

The Constables Duty by several Statutes, as concerning profane Swearing, profaning the Sabbath, Drunkenness, disturbing Ministers, Recusants, Quakers and Conventicles.

WE now proceed to particularize the Constables Office and Duty, as required and enjoyned by several Statutes, having been the larger in the two foregoing Chapters, as well for that we conceive those things to be absolutely necessary to be known by all that would understandingly discharge their Office; as also because that some who lately have obtruded directions for Constables on the World, have either wholly omitted, or very lamely and imperfectly delivered the same.

A Jove principium ——

We shall begin this Chapter with matters appertaining to Religion.

Profane Swearing.

All persons that profanely Swear or Curse, for every such Offence forfeit

feit 12 *d.* to the uſe of the Poor of the Pariſh where the ſame is committed; the offence to be proved within twenty days, by two Witneſſes, or confeſſion of the party before a Juſtice, or chief Magiſtrate of any Town Corporate, who upon ſuch Conviction are to iſſue out their Warrant to the Conſtable, Church-wardens and Overſeers, to levy the Forfeitures by diſtreſs and ſale of the Offenders Goods, reſtoring to him the *Overplus*; but if the Offender have no Goods that can be found, the Offender (if above 12 years of Age) ſhall by the ſaid Officers by Warrant, as aforeſaid, be ſet in the Stocks three whole hours; and if under 12 years old, and do not forthwith pay the forfeiture, then he or ſhe muſt bewhip'd by the Conſtable, or by the Parent or Maſter, in the preſence of the Conſtable; if this were well obſerved we ſhould not have our Streets eccho thus with Oaths, and horrid Execrations.

If any perſons go out of their own Pariſhes on the Lords Day, for any Sports or Paſtimes, as *Bull-baiting*, *Bear-baiting*, *Interludes* (or *Stage-plays*) each perſon forfeits 3 *s.* 4 *d.* to

Profaning the Sabbath.

to the use of the Poor of that Parish where the offence is committed, it being a sufficient Conviction if done in the presence of a Justice, or proved by the Oath of one Witness or more, or Confession of the party upon which the Justice or Chief Magistrate of a Corporation is to direct his Warrant, under his Hand and Seal, to the Constables or Churchwardens, to Levy the penalty by distress and sale of the offenders Goods, returning the *over-plus*; in default of distress found, to set them in the Stocks three hours; but note, the Offender must be prosecuted within one Month. *Stat.* 1. *Car.* 1.

By Sports. Every person keeping, or being present at any Wrestlings, Shootings, Bowlings, Ringing of Bells for pleasure, Mask, Wake, Church-Ale, Dancing, Games, Sports or Pastimes, forfeits 5 *s.* if above fourteen years of Age, or if under, 12 *d.* by them under whose Tuition He or She is: to be Levied on a Warrant by the Constable as aforesaid, or for want of distress to be set three hours in the Stocks; 3. *Car.* 1.

The

The same Statute punisheth all Carriers, Waggoners, Carters, Wainmen or Drovers travelling on the Lords day with the forfeiture of 20*s*. And all Butchers that kill or sell any victuals on that day forfeit 6*s*.8*p*. Which summs after Conviction may by warrant, be levied by the Constable or Churchwardens, to the use of the poor, where the offence is Committed, by distress and sale of Goods, rendring the overplus; the conviction shall be by view of the Justice or chief officer, confession of the party, or oath of two or more witnesses: And for encouragement the Justice, Maior *&c.* may reward the Informer with a third part of the penalty, laid on the Butcher, but all these offences must be prosecuted, within Six Months. And as to Carriers *&c.* There shall be but one 20 *s.* forfeited for one Journey, though they pass through several parishes, which 20. *s.* that Parish shall have where the Distress is first taken. 3. *Car.* 1. *Ca.* 1. *Dalt. fo.* 134.

By Carters, Drovers or Butchers.

Drunkenness. St. 4. Jac. Ca. 5. 21. Jac. Ca. 7. Dalt. Chap. 7.

The Constable or other Inferiour officer in every Parish, shall present

at the Affizes, Seſſions, and Court Leets, all common Tipplers and Drunkards; and if they neglect to ſerve the Juſtices warrant of diſtreſs or puniſhment, againſt Townſmen or other continuing Tipling in any Inn, Alehouſe or Victualling houſe, contrary to the Statute, or againſt perſons for being drunk, that is to ſay, three Shillings, and four pence for Tipling, and 5 s. for being drunk, to the uſe of the poor, to be levied on the offenders Goods and ſale thereof after Six days default of payment, reſtoring the overplus; And in caſe no diſtreſs can be found, to ſet the Tipler in the Stocks for four hours, and the Drunkard for ſix hours, the conviction being by the view of any Major or head Officer of a Corporation, or Juſtice of Peace within their reſpective Limits, or by the oaths of two Witneſſes, (But by the *ſtat.* 2 *Jac.* 5. the Magiſtrates view, his own confeſſion or one witneſs is ſufficient to convict him) I ſay if in this caſe the Conſtable neglect his duty, he himſelf forfeits ten ſhillings to the uſe of the Poor, to be levied upon his Goods by diſtreſs

and

and sale as aforesaid: But note that those offences must be prosecuted and inquired of within six months after they were committed: But those that are convicted a second time shall be bound with two sureties to be of the good behaviour, and the oath of any one that confesseth the offence shall be a good conviction against any offending with him at the same time.

Any person disturbing a lawful Minister in preaching, praying or administring the Sacrament, shall presently be apprehended by the Constable, or Churchwardens, and carried before a Justice, who may if he please commit him to safe custody, and within six days may with another Justice if they find the offence proved by two witnesses, commit him to the Goal for 3 months, and from thence till the next sessions, where giving security for the good behaviour he may be discharged, otherwise to continue in prison till he do submit. He that rescues such an offender shall suffer Imprisonment and also forfeit 5 *l.* which sum the Inhabitants likewise forfeit if they

Disturbing of ministers.

suffer him to escape, St. 1. *Mar. Sess.* 3. *Ca.* 3. Yet quere whether this Statute be in force, for some think it repealed by the 1. *Eliz. Ca.* 2. See *Dalt. Ca.* 41. *p.* 103.

Recusants St. 35. Eliz. Ca. 2.

Recusants above sixteen years of age convicted shall repair to their usual dwelling, or where their father or mother dwells, and not remove above five miles from thence on pain of forfeiting all their Goods, and their Lands and Annuities for life, and therefore they are to give their names in writing to the Minister and Constables; who are to enter them in a book, and transmit them to the Sessions there to be Inrolled.

St. 3. Jac. Ca. 4.

The Constables and Churchwardens ought once every year at the Quarter Sessions to present all Popish Recusants with their Servants and Children above nine years old, that come not to the Church monthly, on pain of forfeiting 20 *s.* Which presentment the Clerk of the peace or Town Clerk is to Record without fee, or he forfeits 40 *s.* And for every such Recusant Indicted and convicted, (not before conviction) the Constables *&c.* that presented him

him, shall have 40 *s.* out of his Goods.

If the Minister, petty Constable or Churchwardens of any Parish, or any two of them, shall complain to a Justice of the peace, of any person suspected of Recusancy, such Justice may tender the Oath of Supremacy to the person suspected, and if he refuse to take it; commit him to Goal till the next Assises or Sessions, where if he again refuse, hee Incurrs a premunire, but in case it be a Feme Covert, she shall only be continued in prison without Bail till she take it. St. 7. Jac Ca. 6.

Quakers that shall maintain an oath in all Cases unlawful, or refuse to take an Oath lawfully tendred, or meeting under pretence of Religion to the number of five or more, being convicted by verdict, confession or notoriousness of the Fact; For the first offence forfeit any sum that the Judges please under 5 *l.* to be levied by distress, or for want thereof, and upon non-payment in a week, to stand committed three months without Bail, to the Goal or house of Correction. Quakers. St. Car. 2. Ca.

For the Second offence 10 *l.* or six months Imprisonment, as aforesaid. The third offence is Transportation. And in these things Constables are to be subservient in the execution of the Justices Warrants to them directed, as well for distraining and selling the estate of such as are to be Transported, as for levying the first and second forfeitures. For if they neglect their duty herein, they forfeit 5 *l.* for every offence, *St. 16. Car. 2. Ca. 4.*

Conventicle. St. 22. Cer. 2. Ca.

If any Constable, Headborough, Tythingman, Churchwarden, or overseer of the poor, shall know or be credibly informed of any Conventicle (that is, any meeting of five persons or more above the family under colour of Religion in other manner than according to the Liturgy of the Church of England) within his precincts, and shall not inform some Justice or chief magistrate, but neglect his duty in execution of this Statute, he forfeits 5 *l.* And a Justice or chief Magistrate if he neglect shall forfeit an 100 *l.* One half to the informer.

By the same Statute, Constables, Head-

Headboroughs, Tythingmen, Churchwardens and overſeers of the poor, are Authorized and required, having firſt received a warrant under the hands and Seals of one or more Juſtices or chief Magiſtrate to levie the fines and forfeitures aſſeſſed on thoſe who ſhall be preſent at ſuch Conventicles, which are as follows.

The firſt offence to be Recorded, and a fine of 5 *s.* impoſed. The ſecond offence a fine of 10 *s.* Both theſe fines to be levied by diſtreſs on the offenders goods, or in caſe of his poverty, on the goods of any other perſon, convicted for being preſent at the ſame Conventicle, at the Juſtices diſcretion. Every preacher convicted forfeits 20 *l.* for the firſt, and 40 *l.* for the ſecond offence; if unknown or thought unable to pay, to be levied on any perſons preſent.

And every one that ſuffers ſuch Conventicle in his or her houſe, outhouſe, Barn, Yard or Backſide, forfeits 20 *l.* In caſe of their poverty, to be levied on any other preſent, provided that no one perſon ſhall pay above 10 *l.* for any one

meeting, in regard of the poverty of others.

All such moneys levied, the Constables *&c.* are to deliver to the Justices *&c.* to be divided, one third part to the King, another to the poor of the parish where the offence was committed, and the other third to the informers *&c.*

It is there also Enacted. That by a warrant from one or more Justices or the chief Magistrate of a Corporation the Constables, Headboroughs, and Tythingmen (overseers are not named) may, with their assistance, after refusal or denial to enter, break open any house where they shall be informed a Conventicle is, and secure the persons. *But no such power is given, when they go to levie the Distresses or forfeitures.*

Note, A Feme Covert offending and Cohabiting with her Husband, the penalties of of 5*s.* and 10*s.* shall be levied on the goods of the Husband.

CHAP.

CHAP. VI.

The Constables Office, Concerning Watching and Warding, Hue and Cries, Riots, Forcible Entries; Arms, Chimney-money, Customs and Excise.

ALL Constables within their precincts are to keep a Night watch from *Ascension* day (commonly called *Holy Thursday*) till *Michaelmas* from Sun Setting to Sun Rising, by two or four men, according to the largeness of the precinct. Watch and Ward. St. 13. Ed. 1. Ca. 4.

Concerning which these things are to be noted.

1. That none but Inhabitants of the same Town or precinct are Compellable to Watch and ward. Kitchin 47.48. 49. Dalt J. P. C. 60.

2. They must be men of discretion, able bodies and sufficiently armed.

3. The said Inhabitants are bound to watch, only by their respective turns, or by the House according to the custome of the place, and not unequally at the arbitrary pleasure of

the Constable. For though the Constable *ex officio* is to order it, and may enlarge it upon occasion, yet he cannot change the course of it, so as to make some watch and excuse others.

4. If any person so Compellable to watch shall refuse so to doe, or neglect his duty therein, the Constable may present such person at the Assizes or Sessions, or complain of it to a Justice, who may bind the offender to the good Behaviour. And some hold that the Constable in such case may of his own Authority set such refusers in the Stocks.

5. That in default of this watch, the Township may be fined, and therefore the Constable is to see it be done in an orderly way, and complain and get it rectified if it be neglected.

6. These watchmen are to examine all strangers that pass by them in the Night, and if they find them suspicious, may Arrest and detain them till morning, and if they refuse to obey may levy Hue and Cry to take them, and if they resist, may justifie beating of them, or set them in the Stocks or Cage till morning, and then if no suspicion

suspicion be found in them, they may discharge them; but if there be grounds to suspect them, Then they must deliver them into the hands of the Constable, to have them before a Justice that he may upon examination, commit, bind over or acquitt them as he shall see cause. Furthermore these Watchmen are to apprehend, Rogues, Vagabonds, Eyesdroppers, and all such as shall go or ride unlawfully Armed &c. See the Stat. of *Winchester* and *Lamb. Office of Const. p.* 12.

Every Constable is to levie Hue and Crie, where there is cause, and to send it East, West, North, and South, wherein tis best to express the nature of the things stoln and to describe the Felons, and when such Hue and Cry comes to an Officer he must with all speed make diligent pursuit both by Horse and foot, after the offender from Town to Town, the way it is sent, and to make diligent search in all suspicious places within his owa precincts. For otherwise both the Constable and the Hundred may suffer for the neglect, and the Hundred where

Hue and Cry Dalt. Ca. 28.

27 Eliz Ca. 13.

Peace and *Superſedeas* Dalt. Ca. 69. *Lambard* office of Conſt. p. 21.

where freſh purſuit Ceaſeth ſhall anſwer half the damages, to the Hundred where the felony was committed.

Though we have before declared the Conſtables duty, in relation to preſerving the peace, yet here it properly falls in to adviſe, that a Conſtable having a warrant from a Juſtice of peace to arreſt a perſon to find ſureties for the Peace, if afterwards he receive a *Superſedeas* either out of the Chancery &c. or from any other Juſtice of the ſame County to diſcharge the putting in ſuch ſecurity; He ought to deſiſt from urging the party further to put in ſureties, for he may then lawfully refuſe to do it, and if the Conſtable Arreſt him for ſuch refuſal, tis falſe impriſonment. But in ſuch caſe tis good the Officer do keep the *Superſedeas* for his better diſcharge, if he ſhall bee called to an account for not ſerving the warrant directed to him.

Riots. St. 27. R. 2. Ca. 8.

All Sheriffs, Conſtables and other the Kings Officers, ſhall ſuppreſs Riots; and impriſon the Rioters and all other offenders againſt the Peace;

Now

Now for the better understanding of this, you must note, that when three or more persons assemble themselves to do any unlawful Act, with force against the person of another his goods or possessions, as to kill, beat or imprison him, to pull down a House, Wall, Pale, Hedge or Ditch, wrongfully, to enter upon or into another mans Possessions, House or Lands, or to cut or take away his Corn, Grass or Woods, or unjustly to hunt in any Park or Warren *&c.* If they only meet to such a purpose or intent though they afterwards depart of their own accord without attempting any thing, this is an unlawful assembly: If after such meetting they shall ride, go or move forwards towards the execution of such their intention, whether they put it in execution or not, this is a Rout, and if they do any such unlawful Act indeed, then tis a Riot, *Bro. Titl. Riot* 4. 5. *Cok.* 3 part *Instit.* fo. 176.

Unlawful assembly.

A Rout. A Riot.

If a Constable or any private person of the same County, in case of a forcible entry, refuse to aid and assist the Justices upon their request to remove

Forcible entry. 15. Rich. 2. Ca. 2.

remove the force, or convey the parties to Goal, he may be imprisoned and fined for his neglect.

Arms. St. 2. Ed. 3. Ca. 3. If any person shall ride or go Armed offensively before the Kings Justices &c. Or in Fairs or Markets or elsewhere by Night or by Day, to the affrightment of his Majesties People, the Constable upon sight thereof may take away their weapons and cause them to be apprized as forfeited to the King, and carry the parties before a Justice to find sureties for the peace: But by the same Statute tis provided that the Kings Servants in his presence, Sheriffs and their Officers, and other the Kings Ministers and such as are pursuing Hue and Cry may bear Arms or weapons.

14. Car. 2. Ca. 3. All High and petty Constables and other Officers within their several Parishes are to be aiding to such persons as by warrant from the Lords Lieutenants, or any two of their deputies under their hands and Seals to search for and seize Arms in the possession of persons judged dangerous, and to secure the same and to give an account thereof to such Officer

ficers: But this search is to be made only in the day time between Sun-rise and Sun-set; and not otherwise; unless in Towns Corporate, Market Town, or Houses near *London* within the Bills of Mortality, for there search may be in the night, if the warrant so requires: In case of Resistance they may enter with force, but such Arms, so seized, afterwards, if the Lieutenants or any two of their Deputies think fit, may be restored to the Owners.

Constables by Warrant under the Hands and Seals of the Lord Lieutenant, or any three or more of the Deputy Lieutenants, must levy all such money, forfeitures, and payments charged on any person within their Liberties, for furnishing of Arms, Horse, or Foot, or payment of Souldiers: and where sufficient distress cannot be found, the Constable by like Warrant from the Lieutenancy, may commit the Offender to Prison, till he pay. ibid. and Stat. 15. Car. 2. Ca. 4.

Though the Duty of high and petty Constables about Chimney money, as it was first appointed by the Statutes of 14 *Car.* 2. *Ca.* 10. and 15. *Car.* Chimney money.

*Car.*2.*Ca.*13. is now much alter'd, particular Officers being appointed for the collecting thereof by the Stat. of *16 Car.* 2. *Ca.* 3.

16 Car. 2 Ca. 3. Yet by the same Statute, all Justices, chief Magistrates, Treasurers, and under Treasurers, Constables and other Officers within their several limits, are to be aiding to his Majesties Officers appointed for collecting the duty of Hearthmoney.

ibid. Such Collectors once every Year, accompanied with the Constable or Tythingman, or in Parishes, or places where there is none, without such assistance, may in the day time enter any House, Edifice, Lodging or Chamber, *&c.* and examine whether there be any more Fire-hearths or Stoves, than formerly returned, and what are increased or decreased since the last Certificate; and if they find any variance, both such Collector, and the Constable or Tythingman are to certifie the same under their hands to the Clerk of the Peace.

ibid. If the Party after demand made at the premises where the duty grows due, by such Collector, make default, or refuse to pay by the space of

of one hour, the Collector, with the assistance of the Constable, may at any time in the day levy the said duty by distress and sale, restoring the Over plus, but with a deduction of necessary charges, which charges are not to exceed one half of the Sum, or Duty distrained for.

Note, No arrears of Hearth-money are to be distrained for after two Years, from the time of their becoming due. And if any violence, opposition or injury be done to any Collector in the due Execution of his Office, Oath being made thereof before any one Justice, or chief Magistrate; such Justice or Magistrate, if they think fit, may commit the Offender to the Common Goal for any time, not exceeding one Month. ibid.

The Constables are to have Two pence in the pound paid them by the Collector to whom they pay the Chimney money by them collected, and are to pay nothing to the Collectors for their Acquittances. ibid.

Sheriffs, Justices and Constables, are upon request to be aiding to any person having a Warrant from the Lord Treasurer, or any of the Barons Customs 12. Car. 2. cap. 19.

rons of the Exchequer, or chief Magistrate of a Port for the search of uncustomed Goods, who (with such their assistance) may in the day time enter into any House, where such Goods are suspected to be concealed, and in case of resistance, may break open the House, and seize, and secure such Goods.

ibid. But no House is so to be entred, but within one Month after the offence supposed to be committed. And if the information whereby the House comes to be searcht, do prove false, the party injured shall recover full costs and damages against the Informer by Action of Trespass.

3 stat. 14. Car. 2. cap. 11. All Constables, Headboroughs, and other the Kings Officers and Subjects, are to be aiding and assisting to all, and every person and persons, which are, or shall be appointed to manage his Majesties Customs; —— And such as are —— Authorized by Writ of Assistance out of the Exchequer, are to take a Constable, Headborough, or other Officer inhabiting near the place; and in the day time to enter into any House, Shop, Warehouse, &c. And in case of resistance

ſiſtance to break open Doors, Cheſts, &c. and to ſeize, and thence to bring any kind of Goods or Merchandiſe whatſoever prohibited and uncuſtomed, and ſecure it in his Majeſties Store-houſe, at the next Port.

Excise. Stat. 12. Car. 2. cap. 23. and 24.

Gagers (or Exciſe men) are to take a Conſtable with them when they enter by night into the Houſes of Brewers, Victualers, &c. To Gage their Coppers, Fatts, or Veſſels; or take an account of their Beer, Ale, Wort, Perry, Sider, Strong-water, Metheglin, Mead, Coffee, Chocolet, Sherbet or Tea; brewed, made, or diſtilled there.

ibid.

Conſtables are alſo upon Warrant from the Juſtices to levy the penalties on the Goods of any perſon convicted of any offence or forfeiture within the Acts for Exciſe, reſtoring the over-plus. And for want of diſtreſs to carry the party to Goal, till ſatisfaction be made.

They are likewiſe upon Warrant to them directed, To Summon all Alehouſe keepers, &c. to appear before the Commiſſioners of Exciſe, at the days and places in ſuch Warrants appointed.

CHAP.

CHAP. VII.

The Constables Office relating to Ale-houses, Beggars, Rogues, Vagrants, Vagabond Children, Labourers, Servants, and punishing hedge-breakers or Wood-stealers.

Ale houses.

IN the Fifth Chapter we have set forth the Constables Duty in order to the suppressing and punishing the odious sin of Drunkenness: but as to Ale-houses, &c. these things are further to be known.

Unlicens'd. Stat. 3. Car. cap. 3.

That all that keep common Ale-houses, and sell Drink without Licence, shall forfeit Twenty shillings to the use of the poor, it being a good Conviction if it appear by the view of a Justice or Major; or by the parties Confession, or upon the Oaths of two Witnesses which the Justices are impower'd to Administer. Which penalty, upon Warrant from such Major or Justice, the Constable is to levy by Distress, and in default of payment within Three days

days to sell such distress rendring the over-plus. And if the Offender have not Goods, or pay not the said penalty within Six days, the Justice may commit such Offender to the Constable to be whipp'd. And if the Constable or inferiour Officer shall not execute the punishment, he himself shall be committed to Goal, till the Offender be punished as aforesaid, or until such Constable shall have paid Forty shillings for the neglect of his Duty to the use of the poor.

Suffering Tippling.

By the Stat. of the 21 of King *James*, *Ca.* 7. All Constables and Church-wardens shall in their Oaths be charged to present the following offences against the Statute of 1 *Jac. cap.* 9. Which is, That all Inn-keepers and Ale-house keepers that suffer any to continue Tippling in their Houses (except labouring men in dinner time, or Lodgers there, or upon sufficient grounds to be allow'd by two Justices) forfeits Ten shillings to the use of the poor: Or if they shall vend or sell less than a full Quart of the best Ale or Beer for a penny, or two Quarts of the small for one penny, they forfeit Twenty shillings to the

the ſame uſe [*But I conceive this part of the Statute ſtands repealed ever ſince the Additional Exciſe impoſed on Beer and Ale*] The Conviction in theſe Offences is upon view of the Major or Juſtice, or Oath of two Witneſſes (but according to 21 *Jac.* 7. One Witneſs, or his own confeſſion, is enough to convict any) And the aforeſaid penalties upon a Warrant from the Juſtice, *&c.* are to be levied by the Conſtables and Church Wardens, but the Diſtreſs is not to be ſold till after ſix days and then in default of payment all that time, to be appriſed and ſold, rendring the over-plus. If no Diſtreſs to be found, the Offender to be committed to Goal till the penalty ſhall be paid. And if any Conſtable, Church Warden, *&c.* ſhall neglect to execute ſuch Warrant for Diſtreſs, or to certifie the Parties want of Goods within Twenty days, ſuch Officer for every ſuch Offence forfeits Forty ſhillings to the uſe of the Poor, to be levied on their Goods by Warrant directed to any indifferent perſon from any one or more Juſtices under their Hand and Seal.

Every

Every Common Inn-keeper, or Ale-houſe keeper, refuſing to lodge a Traveller, he proffering to pay ready money for his Victuals, &c. The Conſtable ought to cauſe him to be indicted at the Aſſiſes or Seſſions, where he may be Fined and Impriſoned. Or the Party grieved may bring an Action of the Caſe againſt the Inn-keeper or Ale-houſe keeper. But they are not bound to Lodg, or find Victuals without ready money firſt paid, if required. *Cok. 9. Rep. fol.* 87. Refuſing to lodge. Stat. 5. Edw. 4. cap. 3.

A main Branch of our Conſtables Office relating to the puniſhment of Beggars and Rogues, we ſhall the more enlarge thereupon. And firſt, let us ſee who by the Law are adjudged and deemed to be Rogues, Vagabonds, and ſturdy Beggars. Rogues, Beggars, *&c.* Stat. 39. Eliz. cap 4. and cap. 17. 43 Eliz. cap. 2. 1 Jac. cap. 7. 21 Jac. cap. 28. Reſol. Judges 13. 15. Dalt. Chap. 47.

1. All and every ſuch Perſons above the Age of Seven Years; Man, or Woman, Sole or Covert that wander from their uſual place of abode; every where begging, or if they do not beg, if they wander and loiter abroad without a lawful Paſſport, or not being able to give a good account of their Travel, are to be counted Rogues.

2. All

2. All Scholars and Sea-faring men that beg, wandring Persons using unlawful Games, Subtile Crafts or Plays, or pretending themselves to have skill in Physiognomy, Palmistry or the like; or to be Fortune-tellers, or Figure-casters.

3. All Proctors, Patent-gatherers (except for Fire) Collectors for Goals, Prisoners or Hospitals wandring abroad, Fencers, Bearwards, Common Players of Interludes (or Droll-Actors) and Fidlers, or Minstrels wandring abroad.

4. All Juglers (Hocus pocus Gentlemen and slight of hand Artists) Tinkers, Pedlers and petty Chapmen, and Glass men. To which we may add our Scotch-Cloth men wandring abroad, especially if they be not well known, or have not a sufficient Testimonial.

5. All counterfeit *Egyptians* (or *Gypsies*) not being Felons, all Persons delivered out of Goals who beg for their Fees, or otherwise do Travel begging; such as go to, or from the Baths, and do not pursue their Licence; Souldiers and Mariners that beg, and counterfeit Certificates from

from their Commanders; all Labourers which wander abroad out of their respective Parishes, and refuse to work for wages reasonably taxed, having no Livelyhood otherwise to maintain themselves; and such as go with general Pass-ports, not directed from Parish, to Parish.

All these are accounted Rogues, Vagabonds, and sturdy Beggars.

Besides these, All Servants that leave their Services (*viz.* out of one City, Town or Parish to serve in another) without the Testimonial requir'd by the Statute, or with a false one. And such Persons as are sick of the Plague (I conceive 'tis meant if they belong to Houses wherein any are sick) wilfully going abroad in Company against the command of Officers, are to be punished as Vagabonds. But none are to be sent to the place of Birth, or last habitation, but wandring Rogues: for those that beg in their own Parishes, or in the High-ways, without the appointment of the Overseers, are to be sent to the House of Correction.

Of the Punishment of Rogues and Beggars.

Stat 39. Eliz. cap. 4.

1. All Constables are to use their best endeavours to apprehend all such Vagabonds, Rogues, or sturdy Beggars, which shall be found and taken wandring, or begging, within their respective Precincts; or, they forfeit Ten shillings for every neglect. And if any other person bring a Rogue, or Beggar to one of these Officers, he must take hold of him, and punish him according to Law, or otherwise he forfeits Twenty shillings.

2. After such Rogues and Beggars are apprehended, the Constable, Headborough, or Tything-man, assisted by the Minister, and one of the Parishioners of the place; is to see them stripped naked, from the middle upwards, and that he be openly whip'd, until his, or her Body be bloody.

3. After this whipping the Parties must be sent away from Parish to Parish, or Tything to Tything, to the place of their Birth; and if that cannot be known, then to the place where they last dwelt by the space

ſpace of one whole Year before ſuch puniſhment, there to be ſet to work, and if that cannot be known, then to the Town through which they laſt paſſed unpuniſhed; and when they come there, if it cannot be diſcovered where they were born, or laſt dwelt, then are they by that Conſtable (or, as ſome ſay, from Conſtable, to Conſtable) to be conveyed to the Houſe of Correction, or Common Goal of that County, to be employed in work, or placed in ſome Service, and ſo to continue by the ſpace of one Year, or in caſe they be not able in Body, that Town is to keep them till they may be placed in ſome Alms-houſe within the ſame County. But in order to this ſending them away, ſuch Vagabonds are to have a Teſtimonial under the Hand and Seal of ſuch Conſtable, Tythingman, &c. and the Miniſter of the place, Teſtifying the day and place of his puniſhment; The place to which he is to be conveyed, and the time limited for his paſſage thither; which time, if by his own default he exceeds, he is again to be whipped from time to time, till he arrive at

the place limited. The substance of which Testimonial is to be entred by the Minister in a Register Book kept for that purpose, on pain of Five shillings for every default.

The form of such Testimonial for conveying Rogues, Vagabonds, and Beggars.

Laurence Lazy, *a sturdy, vagrant Beggar; Aged about Thirty Years, short of Stature, black hair'd, and lean Visag'd, was this One and twentieth day of* Aug. *in the 28th Year of the Reign of our Gracious Soveraign Lord King* Charles *the Second,* &c. *openly whipped at* Tunbridge, *in the County of* Kent *according to Law, for a wandring Rogue. And is assigned to pass forthwith from Parish to Parish, by the Officers thereof the next straight way to* Tuddington, *in the County of* Bedford, *where he confesseth he was born (or dwelt last by one whole Year, if the Case be such) And he is limited to be at* Tuddington *aforesaid, within Fifteen days now next ensuing at his peril, Given under the Hands and Seals of* J. S. *Minister*

Miniſter of Tunbridge *aforeſaid, and of* John Curd *Conſtable, the Day and Year aforeſaid.*

And Note, That a Juſtice of Peace alone, may under his Hand and Seal make ſuch a Teſtimonial, *Lamb.* 206.

If any Conſtable, Tything-man, or Head-borough, be found negligent in the due Execution of this Statute, in manner aforeſaid, he forfeits Ten ſhillings, as we told you before; and all ſuch perſons as ſhall in any kind diſturb or hinder ſuch execution of the Law, forfeit Five pounds, and to be bound to the good Behaviour: and therefore, where a Rogue or Beggar is to be conveyed from Pariſh to Pariſh, 'tis a forfeiture of Five pounds for any Officer that ſhall refuſe to receive them, or, that having received, do not convey them to the next Conſtable in the way that they are to paſs. Reſol. Judges. Sect. 13. and 14.

Every perſon ſhall apprehend ſuch Rogues as he ſhall ſee or know reſort to his Houſe, to beg or receive any Alms, and ſhall carry them to the next Conſtable, or otherwiſe ſhall forfeit Ten ſhillings. Stat. 1. Jac. cap. 7.

Stat. 7. Jac. cap. 4. Constables or Tything-men neglecting to search for Rogues upon the Justices Warrant, or failing to appear at their meeting, to give an account what Rogues have been punished, or sent to the House of Correction, or neglecting to convey such to the House of Correction, as by Warrant are to be sent thither, are liable to such Fine as the Justices think fit, not exceeding Forty shillings.

Stat. 1. Jac. 7. 14 Car. 2 cap. 12. Any Justice of the Peace may reward any persons who shall apprehend and bring before him any Rogue, Vagabond, or sturdy Beggar, by granting to such persons under his Hand and Seal to the Constable, or Tything-man of the place through which the Rogue did pass unapprehended, ordering him to give such person Two shillings for every Rogue so taken. And if the Constable refuse to pay it, the Justices shall proceed against him according to the Statute, 1 *Jac. cap.* 7. and compel him to pay his forfeiture, and out of the same to allow the said Two shillings, with such further allowance for loss of time as the Justice shall think fit.

If

If any perſon ſhall apprehend any Rogue on the confines of any County, who paſſed through any Pariſh of another County unapprehended, then the party muſt carry him to ſome Juſtice of Peace of the ſaid County through which he paſſed, who (upon a Certificate of ſome Juſtice of the County where ſuch Rogue was apprehended, is to grant his Warrant to the Conſtable, &c. which if he refuſe, the Juſtice is to proceed againſt him for Ten ſhillings forfeited by neglect, and cauſe him to pay the ſame, or ſo much thereof as he ſhall think fit, to the party for loſs of time. Stat. 14. Car. 2. cap. 12.

Whereas Conſtables, Tything-men, &c. are at great charges in relieving, carrying with Paſſes, and conveying Rogues, &c. It is enacted, That all Conſtables, &c. ſo out of purſe, with the Church-wardens, Overſeers of the Poor, and other Inhabitants of the Pariſh, may make a Rate, to be confirmed under the Hands and Seals of two Juſtices: and if any perſons refuſe to pay ſuch Rate, then the Conſtable by Warrant from two Juſtices of Peace may ibid.

levy the same on their Goods, rendring the overplus, *&c.*

Stat. 39. Eliz. cap. 4. 1 Jac. cap. 7. Dalt. Chap. 47.

Two Justices of Peace (whereof one of the Quorum) by Warrant under their Hands and Seals, may cause to be levied, all and every the said Fines, Forfeitures, or Penalties against persons neglecting their duty in apprehending and punishing Rogues and Beggars, by Distress and sale of the Offenders Goods, after due conviction, which must be either by confession of the Party, or proof of two Witnesses before the said Justices.

And because the Execution of these Laws is so far required in these Laws, therefore for their better direction in placing, and sending of Rogues, these things (said to be resolved by the Judges at *Westminster*, soon after the making of the said Statute of *39 Eliz. cap. 4.*) are to be observed.

Resol. Judges. Sect. 4. and 5. Dalt. cap. 47.

1. If a Rogue say he was born at such a place, and it cannot be made appear to the contrary, he must be sent thither.

2. If the Husband or Wife have an House, and one of them, or both

both Rogue about, they ought to be ſent to the Town where the Houſe is, and ſo of an Inmate.

3. The Wife, and all Children under Seven Years of age being vagrant, muſt be ſent to the Husband, and if he be dead, then with the Wife where ſhe was born, or dwelt laſt; and vagrant Children above Seven Years old muſt be ſent to the place of their Birth; and if the vagrant Parents, with their Children under Seven Years of age, be placed at the place of Birth of the Parents, or their laſt dwelling; if afterwards the Parents, or either of them dye, or run away, yet the Children once ſetled muſt remain there ſtill, and may not be ſent to their place of Birth, though after they grow to the age of Seven Years.

4. The Wife being a vagrant ought to be ſent to the Husband, though he be but a Servant in another Town.

The Rogue, whoſe place of Birth, or dwelling, cannot be known, having a Wife, or Children under Seven Years of age, they muſt go with the Husband to the place where they

were last suffered to pass through without punishment, where the Children must be relieved with the work of their Parents, though such their Parents be committed to the House of Correction.

6. Constables are not to post away such vagrants as shall be taken by them, or sent unto them, that are desperately sick, or Women ready to be delivered, nor to deliver them to the next Constables after Sunset.

7. If any of these Rogues shall appear to be dangerous to the inferiour sort of people, as threatning, or offering any violence to them, or that will not be reformed from this Roguish life, as where he hath once been whipped and sent home, and doth afterwards wander again: Or when he shall say he was born and dwelt last in such a place, and in truth it is not so: In these Cases he is to be accounted *An Incorrigible Rogue*. And 'tis the duty of all Constables, meeting such person within their Liberties, to carry him before some Justice of Peace, there to be ordered by him according to the Statute.

Lastly,

Laſtly, Perſons that ſhall run from their Families, and leave a Charge to the Pariſh, are to be puniſhed as incorrigible Rogues, and he that threatens ſo to do, may be ſent to the Houſe of Correction, unleſs he can give Sureties for the diſcharge of the Pariſh.

All Artificers or mechanick Trades-men, fit to labour by the day, the Conſtable may, upon requeſt to him made by any perſon that wants help in Hay, or Corn Harveſt ſet on work, and if they refuſe, he may ſet them in the Stocks two days, and one night. And the Conſtable neglecting his Duty herein forfeits Forty ſhillings. Labourers and Servants. Stat. 5. Eliz. cap. 4.

By the ſame Statute it is provided, That no perſon retained in Husbandry, or other Arts therein mentioned, ſhall depart, after the time of his Retainer therein expired, out of the City, Town or Pariſh where he laſt dwelt, to ſerve in another, without a Teſtimonial in a Town Corporate, under the Hands and Seals of the chief Magiſtrate, and two Houſholders, and in the Country, under the Hands and Seals of the Conſtable, ibid.

Constable, and two House-keepers of the Town or Parish where he served last, which Testimonial is to be Registred by the Minister, for which he is to have Two pence, and then to be delivered to the party.

But these Testimonials are now very seldom used, which is one great reason that people are so often deceived with bad servants, and certainly deserves more to be regarded, the Law being very penal therein: For the Master that retains a Servant without such a Testimonial forfeits Five pounds, and every Servant which sheweth not such a Testimonial to the chief Officer in a Corporation, or to the Constable, Minister, or Church-Wardens where he is to dwell, may be imprison'd till he can get one, which if not procured within One and twenty days, or if he produce a false, he is to be whip'd, and used as a Vagabond.

ibid. And Dalt. Ca. 3.

A Preſident ſhewing the Form of ſuch Teſtimonial.

Memorandum, *That* John Lock, *Servant to* Henry Piggot *of the Pariſh of* Chiddingſtone, *in the County of* Kent *Husbandman, is Licenſed to depart from his ſaid Maſter, and is at his Liberty to ſerve elſewhere, according to the Statute in this Caſe made, and provided; In Witneſs whereof we have hereunto ſet our Hands and Seals, this* 24th *Day of* Auguſt, *In the* 28th *Year of the Reign of our Soveraign Lord* King Charles *the Second,* Anno Domini. 1676.

John Aſhdowne *Conſtable of* Chiddingſtone.

John Harriſon
William Colegate } *Houſe-holders there.*

Note,

Note, *if the servant lived with a Woman, then say*, Is licensed to depart from his Mistress *or* Dame, *(as shee is) and if his Master be not an Husbandman, but a* Tailor, Carpenter *or the like, name him accordingly in the Testimonial.*

Hedg-breakers Wood stealers. St. 43. Eliz. Ca. 7.

All such as shall be convicted before a Justice of Peace, for Cutting and taking away of Corn growing, robbing of Orchards, breaking Hedges, and their procurers and receivers knowing the same, if they cannot give the party Injured such satisfaction as a Justice of Peace shall think fit, the Justice may then commit him to the Constable to be whipt for the first offence, and the like for the second; and if he refuse or neglect to see the same done accordingly, the Justice may commit such Officer to Goal, till by his procurement it be executed on the offender. Not only Constables and Headboroughs, but any other persons, in every County, City, Town Corporate, or place where they shall be Officers and inhabitants, are impowered to apprehend such persons as

St. 15. Car. 2 Ca. 2.

as they ſuſpect for having, carrying, or conveying away any burthen or bundles of any kind of Wood, under-wood, Poles, or young trees, Bark of any trees, Gates, Stiles, Poſts, Pales, Rails, Hedgwood, Broom or Furze. And any Conſtable, Headborough, &c. by warrant under the hand and Seal of one Juſtice, may enter into the houſes, out-houſes, Yards, Gardens of ſuch perſons as they ſuſpect: And where they find any woods, underwoods, &c. to apprehend the parties ſuſpected, for cutting the ſame, and thoſe alſo in whoſe Houſes or places any ſuch woods, &c. ſhall be found, and carry them before a Juſtice; to whom if the party cannot give a good and ſatisfactory account how he came by the ſaid wood, &c. by the owners conſent, or ſhall not within ſuch time as the Juſtice appoints, produce the party of whom he bought it; or ſome Credible witneſs to depoſe upon Oath ſuch ſale of the ſaid wood: Then ſuch perſon ſhall be deemed convicted of the cutting and ſpoiling wood, &c. within the meaning of the Statute of

the

the 43 of *Eliz.* aforesaid. And for the first offence, if they do not give the Owner such satisfaction, and within such time as the Justice shall limit, and likewise pay over and above down presently, to the use of the poor of the place, such a sum of money, not exceeding Ten shillings, as the Justice shall appoint; Then the said Justice may commit such party to the House of Correction for any time, not exceeding one Month, or else to be whip'd by the Constable. And if he offend again, then to be sent to the House of Correction for one whole Month, there to be held to hard labour, and for the third offence to be punished as an incorrigible Rogue.

ibid. If any person buy Wood, *&c.* of any justly suspected to have stoln the same; If on examination before a Justice it be found so bought, the Justice may order the Buyer to pay the treble value thereof to the party from whom it was taken, and in default of present payment, grant a Warrant to the Constable to distrain for it, and for lack of distress to commit the party to Goal at his own charge,

charge, there to remain one Month without Bail.

But Note, None are to be punisht by this Statute, who have been punisht by any former Law for the same offence; nor is any to be question'd unless it be within Six Weeks after the offence committed.

CHAP. VIII.

Shewing the Constables Office concerning Weights and Measures, Nets and setting-Dogs, Maltmaking, Tobacco-planting, Physicians, Plague, Forraign Laces, Irish Cattel, Purveyancing, Souldiers, Prisoners, High-ways, Clothiers, Sea fish, Vessels, County stock, Gaming, &c.

Weights & Measures. Stat. 8. Hen. 6. cap. 5. 11 Hen. 7. cap. 4.

IN every City, Borough, and Market Town, there ought to be common Weights and Measures Sealed, at which the Inhabitants may freely weigh, and the cheif Officers of such places

places whether they be Constables, Bailiffs, or others, are upon request to mark and sign such Weights and Measures to any of the Kings Subjects, taking for the marking of every Bushel, One penny.

Stat. 22. Car. 2. cap. 8. Constables are required to search and examine if any buy or sell by any other Bushel than *Winchester* measure, containing Eight Gallons to the Bushel, or strike, and sealed by the Clerk of the Market, and if any person doth not strike the same even with the Brim: And any Constable may seize and break such other Measure, and present the Offender at the next Sessions.

Nets and Setting-Dogs. Stat. 7. Jac. cap. 11. Constables or Head-boroughs upon a Warrant under the Hands and Seals of Two or more Justices of the Peace, have power to search the Houses of persons suspected (except those that keep Warrens, or have Forty pounds *per Annum* of Inheritance, or are worth 400 pounds in Goods) for setting Dogs, or Nets to take Pheasants and Partridges, and may take away their Dogs, and cut their Nets.

The

The Constables and Bayliffs of any Town ought to view and search all Malt made, or put to sale within their Liberties; and if they find any ill, or deceitfully made, or mingled, they may, with the advice of one Justice of Peace, sell the same at such Rate as the Justice thinks fit. Malt making. Stat. 2. Edw. 6. cap. 10. 21 Jac. cap. 28. 3 Car. 1. cap. 4.

Malt is said to be evil or deceitful, *First*, When in the making thereof in *June*, *July*, or *August*, it has not Seventeen Days, and in any other Months Three Weeks at the least. *Secondly*, When by rubbing, treading and fanning, they have not taken out of every Quarter half a Peck of dust, or more. For the neglect of which the Seller forfeits Twenty pence a Quarter. *Thirdly*, when 'tis made of Mow-burnt, or spired Barley, or mixed good and bad together, and for this the Seller forfeits Two shillings a Quarter; but they must be prosecuted within one Year, and it extends not to such as make Malt for their own provision only.

All Sheriffs, Justices, and Constables, upon information that there is any Tobacco Set, Sown, or Planted, or growing within their Precincts, are Tobacco planting. Stat. 12. Car. 2. cap. 34.

are within Ten Days to cause the same to be burnt, pluckt up, or destroyed; unless it be in a Physick Garden, or not exceeding half one Pole in a place.

Physicians. Stat. 1. M. par. 1. Sess. 2. cap. 9. 23 H. 8. cap. 1.

Constables in *London*, and Seven Miles round are to be aiding to the President of the Colledg of Physicians, and persons Authorized by the said Colledg for the due Execution of the said Laws relating to the Physicians, Apothecaries, and Chirurgeons.

Plague. Stat. 1. Jac. cap. 31.

If a person dwelling, or being in a House infected with the Plague, be commanded by the Constable to keep the House, and shall notwithstanding wilfully go abroad, having any Infectious sores upon him, it is Felony. And though he have no such sore, he is to be punished as a Vagabond, and be bound to the good Behaviour.

ibid.

Every Constable neglecting to levy the money as they are appointed by the Justices, or chief Magistrate of Towns Corporate, according as shall be taxed for the Relief of the Poor, infected with the Plague, Forfeits for every offence Twenty shillings.

Constables

Constables upon Warrants to them directed are to search within their respective precincts, in the shops, warehouses and dwelling houses of such persons as shall be suspected to have any forrein Bonelaces, Cut-works, Embroideries, Fringes, Band-strings, Buttons, or Needle works made beyond the Seas: And to seize the same. Forrein Bone-lace, &c. St. 14. Car. 2. cap. 13.

Constables, Tythingmen, Head-boroughs, Church-Wardens, or Overseers of the Poor; or any of them within their respective Liberties, Parishes or places, are to take and seize all great Cattel, Sheep or Swine, or any Beef, Pork or Bacon, brought from *Ireland*, the one half to be disposed of to the use of the Poor of the Parish where they are seized; the other half to his or their own use that shall seise the same, *&c.* And if there shall be any fraudulent agreement, or unfaithful connivance in the first seizure, they may lawfully be afterwards seized again wherever they shall happen to be, the former seisure in another Parish notwithstanding. Irish Cattle. St. 18. Car. 2. cap. 2. & 20. Car. 2.

Formerly

Purveyance or carriage for the King.

Formerly there were divers particulars incident to the duty of Constables, by diverse old Statutes concerning purveyance, or taking up Provisions and Carriages for the King and his Court, but now those Statutes are obsolete and of no force: For by a late Statute the method for these things is thus provided. That the Clerk of the Kings Carriages three days before his Majesties Arrival shall give notice to the two next Justices to the place, to provide such a number of Carts, and Carriages, which the Constables upon their warrant are to press and provide; Each Cart furnisht with Four able Horses, or four Oxen and two Horses, to be paid six pence a mile for every mile they go laden, to be paid in hand at lading, and not to go above one days Journey: Which if any shall refuse without reasonable cause, he forfeits Forty shillings, to be levied by the Constable on a warrant. And if the Justice or Constable take any bribe to spare any fit person from such carriages, or press more carriages than directed, he forfeits Ten pounds.

St. 13. Car. 2. cap. 8.

No

No Pre-emption (or priviledge of buying before others) shall be henceforth allowed the King or any of the Royal Family in or out of any market, but the subjects may dispose of their goods as they please: And if any shall make purveyance or impress any carriages otherwise than as aforesaid, one Justice and the Constable at the request of the party grieved may commit him to Goal and Indict him next Assizes or Sessions, or the party grieved shall recover treble damages and treble costs on an Action. 12 Car. 2. cap. 24.

Two or more Justices by warrant from Commissioners of the Navy or Master of the Ordinance, are to cause Constables to provide carriages for twelve miles round from the place of lading, who are to have twelve pence a mile for every load of Timber, and eight pence a mile for every Tun of other Commodities, and such as refuse, being warned, to send their Teams, forfeit Twenty shillings, but they must be paid in hand, and are to travel no further, nor work anylonger than the Justices shall order. Stat. 14. Car. 2. cap. 20.

Constables

Maimed souldiers St. 43. Eliz. cap. 3.

Constables and Church-Wardens, are to levy by distress and sale all moneys rated on any person within their Liberty, for the relief of the Poor maimed Souldiers and Mariners, and pay it to the high Constable, or they forfeit Twenty shillings.

Relief of Prisoners. ibid.

In the same manner they are to levy what is rated on any for the relief of the prisoners in the Kings Bench and Marshalseas, or for the succour of Hospitals and Alms-houses, and to pay it to the high Constable, on pain of Ten shillings.

Bridges. St. 21. Hen 8. cap. 3.

Four Justices are Authorized to allow a Tax for repair of any decayed Bridges in the high-way, which must be assessed by the Constable and two of the sufficientest inhabitants in the Parish.

High-way. St. 2&3. Ph. & Ma. cap. 8.

Constables, Tythingmen and Churchwardens of every parish are upon the Munday or Tuesday in *Easter* week with the consent of the major part of the parish then present (notice having been given the Sunday before in the Church) to chuse two or more surveyors for their

high-

highways, and give notice thereof to the parties choſen, in writing, under the penalty of Five pounds to be forfeited by the ſame Conſtable, *&c.* in default thereof. St. 14. Car. 2. cap. 6.

Conſtables of *London* and *Weſtminſter*, upon warrants to them directed in that behalf, are to levy by diſtreſs all penalties forfeited by any perſon, about repairing the Highways and Sewers in and about the ſaid Cities, and for want of diſtreſs, or non-payment within Six days after demand, the offender may be committed to Goal till payment. Ibid.

Conſtables (as well as ſurveyors) wilfully ſuffering any travelling wagon or Cart to go or paſs through any part of their Liberties, in any Road or publick Highway with above Five Horſes in length, forfeit ſuch fine as a Juſtice ſhall think fit, not exceeding Forty ſhillings; of which ſum of Forty ſhillings every owner of ſuch Cart or Wagon, forfeits one third part towards mendment of the ways; another third part to the poor, and the laſt third part to him that diſcovers the offender. Sr. 22. Car. 2. cap. 12.

Of the Surveyors duty we shall treat particularly hereafter.

Clothiers. St. 14. Car. 2. cap. 5.

Constables on request to them made, are to be aiding and assisting to the Wardens and Assistants for regulating the trade of Worsteds, and other stuffs called *Norwich* stuffs, made within the City of *Norwich* or County of *Norfolk*, Also within the West Riding of the County of *York*, they are, upon warrant from the Justices of peace, Master and Wardens of the Corporation of Clothiers, within the said Riding, or any Thirteen of them to levy all such fines, penalties and forfeitures as shall grow due from any Clothier by Virtue of that Statute of the 14 *Car.* 2. *cap.* 5.

St. 14. Car. 2. cap. 31.

Sea-fish St. 5. Jac. cap. 12.

Where any offence is committed about the erecting new Wears along the Sea-shore, or in any Harbour, or Haven, or Creek, for the destruction of any Spawn or Sea-fish in any Wear or other Engine within Five miles of the mouth of any Haven; or with fishing in any Hay-net or Drag-net under three Inches meash, the

the Constables and Church-Wardens by warrant may levy the forfeiture by distress or sale of the offenders goods, returning the over-plus; the penalty is Ten shillings and the loss of their Nets.

Vessels. Sr. 23. H. 8. cap. 4.

All Majors, Sheriffs, Bailiffs, and Constables (where no Wardens of Coopers be) are impowered to search, view and Gage Barrels, Kilderkins, Firkins and other Vessels, to be made within their Liberties; and to have the advantage as the Wardens of Coopers in London have.

County Stock. Stat. 13. Eliz. 2. & 3.

The Constables and Church-Wardens of each Parish, if the Parishioners disagree, have power to rate and allot within their Parish their assessment for the shire stock, wherewith the said Parish was charged at the Quarter Sessions, and may levy the same upon any of the Parishioners by distress and sale of his goods, restoring the overplus.

Gameing. St. 23. H. 8. 3.

Every Major, Sheriff, Bailiff, Constable, or other Minister of Justice, within their several limits, on pain of forfeiting Forty shillings for every default, ought to search once

every month at the least, Places where unlawful games shall be used, and may arrest and imprison both the Keepers of such places and the Gamesters, and if any of the said Officers shall know of any tradesman whatsoever, Mariner, Fisherman, or Waterman, that doth play at Tables, Dice, Cards, Tennis, Quoiting, Logating, or any other unlawful Game out of *Christmas* or out of their masters house in the *Christmas*, unless by the Masters License, that hath One hundred pound *per* annum, may commit them to prison, till they give sureties to the King not to use the same again.

CHAP.

CHAP. IX.

The Power and Duty of High Constables alone.

CLothiers shall pay their Carders, Spinners, and other Labourers in lawful mony, and not in Wares, under pain to forfeit three times so much as their wages: And must deliver them their Wool by due weight: And Carders, Spinners, Fullers, Dyers, Sheremen and other Labourers, shall do their work faithfully on pain of forfeiting double damages. And the Constable of the Hundred may hear and determine the complaints therein on each side by due examination of the parties, and for non-payment of the said forfeitures, may commit those they shall find guilty to the Goal, till the same be paid. St. 4. Ed. 4. cap 1.

The said High Constables are impowered to enter into any house, Lands or other place to search for any Tenters, Ropes, Rings, Headwrenches or other Engines for St. 39. Eliz. cap 20.

ſtretching of Cloth, and if they find any, to deface them: And if the owners ſhall afterwards uſe them, theſe Officers may ſeize and ſell them, diſtributing the money to the poor.

Sr. 14. Eliz. cap. 5. High Conſtables muſt pay over what mony they received from Church-Wardens aſſeſſed on any pariſh for relief of poor priſoners, under the penalty of Five pounds, at the next Quarter Seſſions to the Collectors appointed by the Juſtices at the Seſſions appointed to receive it: As likewiſe what they ſo receive for the relief of poor priſoners, in the Kings Bench and Marſhalſeas under pain of Twenty ſhillings: and the ſame thing for moneys received for maimed Souldiers and Mariners, on pain of Forty ſhillings.

Sr. 43. Eliz. cap. 3.

The ſaid High Conſtables are likewiſe to preſent unto the Juſtices at their Seſſions or monthly meetings, of their Diverſions, and cauſe their petty Conſtables, Headboroughs &c. in their reſpective Liberties to make return to them of,

1. The names, Surnames, additions

tions and qualities of all Popish Recusants (as well house-keepers as Lodgers, residing within their precincts.

2. Such as continue Tipling in Inns or Alehouses, especially on the Lords day or Holy days, and such as they find drunk, together with those that entertain them.

3. All profane swearers or Cursers, and the number as near as they can of their oaths. Victualers selling Beer or Ale without License. Persons that keep Gaming places, and the names of those that play there.

4. Refusers to Watch or Ward, harbourers of inmates, or of such as are like to charge the parish.

5. The defaults of Petty Constables for not punishing beggars, Rogues, *&c.*

6. The names of such as live idlely without estates at their own hands, suspicious persons, Whores, night-walkers, Mothers of Bastards like to charge the Parish; such as refuse to take poor Parish Children Apprentices.

7. Defects of High-ways and Bridges, the Names of those that

should repair them, Scavingers neglecting their duties, and the Names and places of such as commit common Nusances, by laying down soil, dirt, or ashes in the Street, or refusing to pave the Streets where usually paved.

8. Of Bakers selling Bread too light, Brewers vending Ale to unlicensed Victualers, Forestallers and Regrators of any kind of Victuals in Markets.

Lastly, whoever can prove any of the said Offences, are to be summon'd to such Sessions to give Testimony.

And so much shall suffice for the Office of Constables.

THE

THE OFFICE OF Church-Wardens.

CHAP. I.

The Nature of their Office.

CHurch-Wardens are Officers yearly choſen to take Care, ſee to, and preſerve the Church and Goods belonging thereunto, as Books, Communion Cups, and other decent Ornaments and Furniture of the Church, which they find there at their coming into this Office, or at any time during its continuance. War.

When this Office first begun I shall not trouble my self or the Reader to enquire, because that pains is hardly like to be rewarded with satisfaction. 'Tis agreed, that they are very ancient, and are to be chosen in every Parish by the joynt consent of the Minister and Parishioners, wherein if they cannot agree, then the Minister shall chuse one, and the Parishioners another, and this is to be done in *Easter* Week.

how chosen. Canons 3 year of K. James Can. E. 9. & 90.

But where an ancient Custom of chusing is in any Parish contrary to this Canon, such Custom is still to be observ'd, of which we have many Presidents, Prohibitions having been granted, as Warners Case, p. 17. Jac. B. R. Evelins *Case.* 15. Car. 1. B. R. *&c.*

Are a Corporation.

An Attorney cannot be made a Church-Warden; if he be chosen and refuse, and so be sued in the Spiritual Court, a Prohibition shall be granted as in *Wilsons* Case. *p.* 14. *Car.* 1. *B. R.*

These Church-Wardens having the charge of the Church Furniture, and it being part of their duty, if there

there be any want of those things to provide them for this purpose (in favour of the Church) the better to enable them herein, the Law doth make them a kind of Corporation. That is to say, They are persons able by the Name of Church-Wardens to purchase or take moveable Goods or Chattels, and to sue or be sued at Law, for, or about such Goods for the use and Benefit of their Parish, and therefore, 12 Hen. 7. fol. 27. Finches Law. l. 2. cap. 17.

A man in his life time may give, or bequeath by his last Will money, or other moveable things to the Church-Wardens or Parishioners of a Parish, either for repairs about the Church, or to buy decent Ornaments for the same: *Book.* of *Entries. fol.* 576.

But they cannot take or prescribe to have Lands to them and their Successors, nor can they have any Action at Common Law to recover any Goods so given or bequeathed to them, or otherwise belonging to them, of which they never had possession (but it seems in such Case they have their remedy only in the Spiritual Court, or in equity) But if the Church-Wardens are once possessed Finch, *ubi supra.* Kitchin. p. 277. Equity.

eſſed of any Goods or Ornaments belonging to the Church, and afterwards the ſame things are taken from them, then they have the ſame remedy at Common Law as other men, *viz.* To indict the takers if ſtoln, or if otherwiſe converted or abuſed, as a Bell broken, *&c.* to ſue them by Action, in which they recover Damages, not to their own but the Pariſhes uſe. And though the Church-Wardens from whom the Goods were taken be out of their Office, yet it ſeems their Succeſſors may ſue and recover as aforeſaid.

Hadmans Caſe. 3. parr. Croo. Rep.

10 H. 4. fol. 9. Kitchin. p. 277.

This veſting of Goods in Church-Wardens is ſo far favour'd by the Law, that it will ſometimes create a Giſt to them, even without any writing or words at all: For if a man buy a Bell, and hang it up in the Steeple, or make and ſet up a Pew in the Church, without any expreſs Donation, yet by the very Act they become ſo dedicated to the Church, that if he, or his, afterwards ſhould go to take them away, or remove them, the Church-Wardens might ſue them for ſo doing.

8 Edw. 4. fol. 7.

Yet theſe Officers have no ſuch property

property in the Goods of the Parish, as thereby to have power to give, sell, release, hurt, or impair them; For if they do, the Parishioners (though their Year be not up) may elect new ones, who may have an account against their Predecessors.

If the Organs be taken out of the Church, the Church-Wardens shall have an Action of Trespass for the same, though they were taken by the Vicar himself, for they belong to the Parishioners, and not to the Parson. Nor can he sue any person that takes them in the Ecclesiastick Court. Tr. 12. Jac. in B. R. *per curiam.*

But as touching any Estate of Lands, or profits of any Lands, the Church-Wardens are not to intermeddle. And therefore, if any person shall break the Walls, Windows, or Doors of the Church; cut down the Trees in the Church-yard, or eat up the Grass there; in this Case, not the Church-Wardens, but the Parson or Vicar must bring the Action. 8 H. 6. f 9. Smith and Pannels Case.

If the Church-Wardens present in the Ecclesiastical Court that *I. P.* one of their Parishioners is a railer, and a sower M. 16. Jac. in B. C.

sower of discord amongst his Neighbours, a prohibition lies to stop their Suit, for this Case belongs to the Jurisdiction of the Leet, and not to the Spiritual Court, unless such railing were in the Church, or Churchyard.

Ch. of Uffington's Case. Hill. 15. Car. 1. in B.R.

If they sue *M. W.* in the Ecclesiastick Court for that he, and all those formerly owning that Estate, used to treat the Parishioners with Cakes and Ale, *&c.* at their going in procession, a prohibition lies, for that this claim is in the nature of a Corrody, and not to be suffer'd.

Seats in the Church.

The Church-Wardens are to repair the Seats in the Church, but the disposal of them who shall sit in them, belongs of common right to the Ordinary (or Bishop) of the Diocess, so that he may place or displace them as he pleases, except

Rolls Cases part. 2. fol. 288.

1. The Seats in the Chappels belonging to Noble men.

2. Where a Man and his Ancestors having such an Estate, have used to repair a certain Seat or Isle of the Church, and to sit there, and none else; there the Ordinary cannot displace him, but a prescription of

sitting

ſitting there is not good without preſcribing to repair alſo.

CHAP. II.

The Church-Wardens Duty about Reparations, making of Rates and Preſentments, and in what things they are to joyn with the Overſeers or Conſtables.

CHurch-Wardens by the Common Law are bound to take care that the Body of the Church, and the Tower (or Steeple) be from time to time ſufficiently repaired, but if the Chancel (which in moſt, if not in all places, is to be repaired by the Parſon) or any Iſle, or part of the Church, which any man claims by preſcription to himſelf, or his Houſe, be in decay, the Church-Wardens are not bound to repair it. 37 H. 6. 30. 12. H. 7. 10.

They are likewiſe to take care that the Church, and Church-yard be kept decent and clean, to provide Books of Canon 20. & alias.

of Common-Prayer, Books of Homilies, a Parchment Book for Registring Christnings, Weddings, and Burials, as also Fonts, Pulpits, Tables, Chests for Alms, Communion Cups, and other requisite Ornaments and Furniture, and a Chest with three Locks and Keys for keeping the same in, and Bread and Wine for the Sacrament according to the number of the Communicants.

Jeoffries Case. Coo. Rep. l. 5. For defraying the necessary charges of these things they may impose Rates upon the Parish; which must be done by the Church-Wardens with the assent of the Major part of the Parishioners upon a publick warning given them before to assemble to that purpose. But if upon such fair notice the Parishioners will not come, it seems the Church-Wardens, and Overseers of the Poor alone, or the Major part of them may make the Rate.

But here we must distinguish between Church-Reparations, and Church-Ornaments, or requisite accommodations for the Worship and Service of God in a Church. Towards the

charge

charge of the first, A Person is chargeable in respect of his Lands, towards the last only in respect of his dwelling or habitation and personal Estate.

1. Under the Term Church-Reparations, are comprehended, The Walls of the Church, and Church-Steeple, the Church-yard Walls of Stone or Brick, or Rails as the Custom is, The Windows, Iron Bars and Glass, the Roof of Timber with Laths, Nails, Priggs, Dogs and Bolts of Iron, The covering of Lead, Tile-slates or Shingles, the Floor with Stone or paving Tile, The Doors with Locks and Keys, Stairs, Floors, Bells, Wheels and Ropes in the Steeple. The Pulpit and the Pews, or Seats not made by private men by custom. All these are to be done by Land-rate, though the Occupier of such Lands lives in another Parish.

2. By Church-Ornaments, *&c.* are meant, the Communion Table, and coverings thereof, the Communion Cups, the Bread and Wine, the Bible and other Books appointed by Law; The Surplice, Pulpit-cloth and Cushion, washing the Communion Cloths, Candles when there is occasion;

sion. The Clerk and Sextons wages, and the expences of Church-Wardens and Sidesmen about the necessary affairs of the Parish. And all these are to be raised ratably by the Parishioners, and not by Out-dwellers.

Andrews Case. Trin. 11. Jac. in C. B. And here Note, That though a Man inhabiting one Parish, and having Lands which he uses and occupies in another, may be charged for Church-Repairs to the Parish wherein the Lands lye, because he may come there when he lists, and is charged in respect of the Land; Yet if he Lease out this Land in the other Parish reserving Rent, he shall not then be charged in such other Parish, because there is now a Parishioner and Inhabitant who may be charged.

Mich. 13. Jac. in C. B. Heb. Rep. Where there is a Chappel of ease in a parish, and part of that parish have used time out of mind, to repair such Chappels and there to hear divine service and marry; only they always buried at the Mother-Church, here they must still Contribute to the Repairs of the mother Church, for the Chappel was erected only for their ease, not to prejudice the rest of the Parish. It

If the Major part of the parish agree to have a Bell more than they were wont to have, (or it seems if they will have an Organ the Law is the same) which is bought, and they make a Rate for paying for it, this shall bind the rest of the parishioners though they never consented to, or did oppose it, otherwise a few covetous, obstinate people might hinder whatever should be intended for the Churches ornament. M. 2. Car 1. in B.R

As to the Church-Wardens presentments in the Ecclesiastical Courts, the practice usually is to swear them to present according to a certain Book of Articles at the same time delivered to them by the Bishop or his Surrogate: But where persons refusing to take such Oath, have been excommunicated, diverse prohibitions have of late been granted, Commanding the Bishops to take off such their sentences, because the Imposing of such Oath is against Law, as well for that Ecclesiastick Courts by the Common Law have not power to Administer an Oath in any other causes but such as are either Matrimonial or Testamentary: As also because the same Church-Warden of Arundels case in C.B.P. 28. Car. 2.

same is forbidden by the Statute *Car.* 2. which took away the Oath *Ex officio.*

But though they may not be compelled to take such oath, yet if they shall not present according to the Articles delivered, no doubt but they may for such their neglect be prosecuted in the Ecclesiastical Court; and in that case no prohibition lies.

Canon. 116. But by the Canons themselves, Church-Wardens or Sides men are not bound to exhibit their presentments above once a year where it hath been no oftner used: Nor above twice a year in any dioceſs whatsoever except at the Bishops visitation; for which presentment the Register shall not take above Four pence for one year, on pain of a months suspension from his Office for every offence. But the Church-Wardens may voluntarily present oftner if they please.

...n. 113. ...18. One of these two times is to be about ten days before Easter: And the Parson or Vicar is to joyn with them in their presentments; and if they refuse, then the Parson or Vicar (or

(or in their abſence the Curate) may themſelves preſent offences to their Ordinaries at all ſuch times or as oft elſe as they find occaſion.

Church-Wardens, &c. after their preſentments exhibited at any of the two times aforeſaid or when elſe they do it, ſhall not be any farther troubled for the ſame, except it evidently appear that they did willingly and wittingly omit to preſent ſome publick offence or crimes which they know committed, or could not be ignorant that there was then a publick fame of them, or unleſs there be very juſt cauſe to call them to explain their former preſentments. And in caſe of wilfull omiſſion, the Ordinary ſhall proceed againſt them (ſays the Canon) as in caſes of perjury is uſed in the Eccleſiaſtical Court, *De hoc tamen quære* Can. 117.

Furthermore by the Canons.

Church-Wardens are to ſee that all their pariſhioners reſort to their pariſh Church duly all Sundays and Holy daies, and continue there the whole time of divine ſervice, in which Can. 19. et al.

which time they are not to permit any to walk, ſtand idle, or talk in the Church or Church-yard: They ſhall likewiſe call upon ſuch as neglect coming to Church, and if they amend not on ſuch admonition they muſt preſent them.

Can. 88. They are to ſuffer no Plays, Feaſts, Banquets, Suppers, Church-Ales, Drinkings, Temporal Courts or Leets, Lay Juries, Muſters, or other profane uſage to be kept in the Church, Chappel, or Church-yard: Nor the Bells to be rung ſuperfluouſly on Holy days or Eves abrogated by the Common prayer Book. Nor at any other time without a good cauſe to be allowed of by their Miniſter and themſelves.

Can. 50. & 8. 5. They ſhall not ſuffer any man to preach within their Churches or Chappels, but ſuch as ſhall ſhew their Licenſe. And alſo they are to ſee that the peace be duly kept in the Congregation, and that all perſons excommunicated bee kept out of the Church.

Can. 8. 9. The Church-Wardens upon the expiration of their year, or within one month after, are to give a juſt account

account of what they have received, and disburſed, and to deliver up what mony, or other things belonging to the Church, they have remaining in their hands, to their ſucceſſors, by Bill indented: And if they refuſe ſo to do, they may either be preſented at the next Viſitation Court; Or the ſucceeding Church-Wardens may have an Action of Account againſt them for the ſame at Common Law, wherein they ſhall be allow'd all neceſſary diſburſments, and Expences incident to their Office about the affairs of the pariſh, and the reſt will be recovered againſt them. 8 Ed. 4. fo. 6.

Caſes wherein the Church-Wardens are Jointly concern'd to Act with other Officers, or equally impowered with them by ſpecial Statutes.

1. They are to joyn with the Overſeers of the Poor in the execution of their whole Office; for they have an equal authority and charge with them therein. The particulars we ſhall ſhew under the next Title when we come to declare the Office of ſuch overſeers.

2. They

2. They are to joyn with Constables in apprehending such persons as disturb Ministers; in levying forfeitures for swearing or Cursing, or for killing Hares, Pheasants or Partridges: As likewise for Tippling and Drunkenness, Prophaning the Sabbath, destroying Fish unlawfully, Levying Twelve pence for not coming to Church every Sunday, &c.

4. They are also to joyn with Constables in making Rates for maimed Souldiers or Mariners, and conveying Prisoners to Goal, and seizing *Irish* Cattel, receiving Rogues brought to them and passing them away: in chusing Surveyors and appointing days for working in the Highways, chusing Scavingers in *London*, and levying the penalty of Five pounds upon the parties goods that is not Buried in Woollen according to the Act. 18 *Car.* 2. *cap.*

All which being particularly expressed in the Constables Office, to avoid vain Repetition we thither referr the Reader,

An

An Appendix to the Duty of Church-Wardens, concerning the deſtruction of noiſome Fowl and vermine.

IN every Pariſh the Church-Wardens and ſix other of the pariſhioners deſired by the Church-Wardens to aſſiſt for that purpoſe, ſhall yearly in one of the Holy days in Eaſter week, and at any other time when it ſhall be needful, Tax and rate every perſon having the poſſeſſion of any Lands or Tithes within their pariſh, to pay ſuch ſums of mony as they ſhall think meet, according to the quantity of their Lands or Tithes, for and towards the deſtruction of noiſome Fowl and vermine: And all ſuch as refuſe or do not pay the ſame within Fourteen days after demand made by the ſaid Church-Wardens or one of them, ſhall forfeit for every time Five ſhillings which, together with the ſum aſſeſſed, ſhall be levied by diſtreſs on ſuch parties

St. Eliz. cap. 15. 14 Eliz. cap. 11.

goods by the ſaid Church-Wardens or one of them, the ſame diſtreſs to be ordered and uſed as Diſtreſſes for Amerciaments in Leets.

And as well the ſaid Rates as penalties ſhall be yearly by the Church-Wardens or one of them delivered by Bills indented to two honeſt ſubſtantial perſons of the pariſh, elected and appointed by the Church-Wardens named diſtributers of the proviſion for the deſtruction of noiſome Fowl and Vermine. And if the Church-Wardens and Six Inhabitants or the ſaid diſtributors or any of them ſhall refuſe or make default in execution of this Act or any part thereof, ſuch offender forfeits Five pounds for every default.

Theſe diſtributers are to pay thoſe that ſhall deſtroy any noiſome Fowl or vermine as follows.

For every 3 heads of { *old Crows*, *Choughs*, *Pies or Rooks.* } 1 *d.*

For every 6 heads of { *young Crows*, *Pies*, *or Rooks.* } 1 *d.*

For

For every 6 Eggs of any of these Fowls, one penny.

For every dozen of *Stares* heads, one penny.

For the head of every { *Merton, Hawes, Furse-kite, Mold-kite, Buzzard, Cormorant or Ring-tail.* } 2 *d.* and for 2 Eggs of them 1 *d.*

For every *Iron* or *Ospraies* head, four pence.

For the head of every { *Woodwall, Pye, Jay, Raven, Kite, Kingsfisher, Bulfinch, or other Bird that spoils fruit.* } 1 *d.*

For the head of every *Fox* or *Gray* twelve pence.

For the head of every { *Fitchew, Polcat, Stote, Weasel, Fair, Badger or Wild-cat.* } 1 *d.*

For every 3 heads of *Rats* or *Mice*, one penny.

For every head of a *Mole*, *Warp*, or *Want*, one half penny.

All which heads, *&c.* ſhall be kept in a fitting place, and once in a Month brought forth before the Church-Warders and Taxers, or any three of them by the ſaid Diſtributors, who ſhall then account what money they have diſburſed for the ſame: And then they ſhall be burnt, conſumed or cut aſunder. And what money remains in the Diſtributors hands, ſhall be delivered over by them at their years end to ſuch as are choſen to ſucceed them.

But Note, this Act ſhall not extend to give any Liberty or Authority to any perſon or perſons whatſoever, to uſe or exerciſe any means or Engines for the deſtruction of *Crows*, *Choughs*, *Rooks*, or other the aforeſaid vermine, in any place, or places to the deſtruction or diſturbance of the building or breeding of any kind of *Hawks*, *Hernes*, *Egritts*, *Paupers*, *Swans*, or *Shovelers*, or to the deſtruction or hurt of any *Doves*, *Dove-houſes*, *Deer*, or *Warren* of *Conies*: Nor ſhall extend to give or appoint any ſum or ſums of money, to be given,

given, paid, or distributed to any person or persons for the heads of any *Buzzard*, *Ring-tail*, *Herne*, *Polecat*, *Fitchew*, or *Stote*, that shall or may be taken in any Warren, or Ground employed for *Conies*; nor to the taking of any *Stares* in *Dove-houses*, nor to the destruction or bringing of any *Kite* or *Raven* killed in any City or Town Corporate, or within Two Miles of the same.

OF THE OFFICE AND DUTY OF *Overseers of the Poor.*

CHAP. I.

Of the Nature of their Office, in setting to work the Poor, and putting out Apprentices.

THE Overseers of the Poor are Officers yearly appointed to be joyned with, and assistant to, the Church-Wardens in the

the over-ſight and ordering of the Poor of the Pariſh; anſwering in nature and effect to the Office of Deacon in the Primitive Church, though now Cuſtom has brought that word to ſignifie an Officer of a very different kind.

Theſe Overſeers ought to be perſons of competent wealth, and a good Conſcience, faithfully to perform their Duty to the Poor committed to their charge, they are to be choſen and made by two or more of the Juſtices of Peace of the County (whereof one muſt be of the *Quorum*, dwelling in, or near the Pariſh for which they are elected, which Juſtices are yearly under their Hands and Seals, at *Eaſter*, or within one Month after, to appoint two, three, or four ſubſtantial Houſe-keepers (according to the greatneſs of the Pariſh) to be Over-ſeers of the Poor, and in default of ſuch appointment every Juſtice of that diviſion forfeits Five pounds. Stat. 43. Eliz. cap. 2. and 3. 1 Jac. cap. 25. 3 Car. 1.

And here Note, that the Law ſays theſe Officers are to *be joyn'd with the Church-Wardens to look after the Poor.*

So that 'tis plain the Church-

Wardens have an equal Authority with them in the buſineſs, and may be puniſhed if they neglect their duty herein. But if there be but one Church-Warden in a Pariſh, it may ſuffice. And the Over-ſeers of the Poor, and this Church-Warden may execute the Office well enough.

2. *Note*, That the Major part of theſe Over-ſeers and Church-Wardens may do any thing belonging to their Office without the reſt. But they ought to have the allowance of Two Juſtices (*Quorum unus*) to every thing they do either ſpecially, or at leaſt generally.

ibid. 3. Theſe Overſeers (and Church-Wardens too with them) or ſuch of them as not hindred by juſt cauſe (to be allowed by two Juſtices) are once a Month to meet in the Church on Sundays, after Evening Prayer to adviſe together concerning matters appertaining to their Office, and in the Execution to uſe all diligence on pain of Twenty ſhillings forfeiture on every default.

Their

Their Office is chiefly to take care for ſetting the Poor to work, relieving them when unable to work, and ſetling them when deſtitute of habitations, ſo as no Pariſh be unjuſtly charged.

1. Theſe Officers are to ſet to work the Children of ſuch whoſe Parents they ſhall think not able to keep and maintain them, and all ſuch perſons married, or unmarried, as having no means to maintain themſelves, uſe no ordinary and dayly trade of Life to get their Living by; and all ſuch likewiſe as can get no work elſewhere. And if any by them ſo apppointed to work ſhall refuſe ſo to do, or to work for the wages aſſeſſed, any Juſtice of Peace may ſend them to Goal, or the Houſe of Correction. Setting to work.

And the better to enable them to ſet ſuch poor people at work, the ſaid Overſeers and Church-Wardens, with conſent of Two, or more Juſtices (one of the *Quorum*) may ſet up, uſe and follow any Trade, Myſtery, or Occupation only for the Stat. 3. Car 1. cap. 4.

setting to work, and relieving the Poor of their Parish, notwithstanding any Statute to the contrary.

Poor Apprentices.

2. In pursuance of this end of their Office, they may with such consent of Justices, and ought to bind forth to be Apprentices such Peoples Children whose Parents are unable to maintain them, concerning which Note,

Stat. 43. Eliz. cap. 2. Dalt. cap. 31.

1. That the Children so put forth ought to be above Seven and under Fifteen Years of Age when they are first bound, and they may bind the Man-child till Twenty four Years of Age, and the Woman till Twenty one Years of Age, or that she shall be Married, which shall first happen.

Resolution of the Judges. *Anno.* 1633.

2. These Officers may with the Justices help compel any man within the Parish whom they think fit, to take such a poor child, with, or without money according to the Age of the child, and condition of the intended Master. And if such Master and they cannot agree, then

then the Justices are to determine it.

3. They may put them to Weavers, Masons, and the like Mechanick Trades, as well as to Husbandry or Housewifery, and though a man be not a Tradesman, but a Knight, Gentleman, Clergy-man or Yeoman, and though he do not keep House, but be a Lodger, if he use Husbandry, Cloathing, Grasing, &c. or however his case be, if by his calling and profession, he have occasion to entertain and must use Servants of like quality, he may be compelled to take such Apprentices, yet if he be rich, and will live so, as to pretend he has no occasion, yet he may be forced either to take one himself, or give money towards placing him with another, all which shall not at all excuse his ordinary assessment to the poor.

4. If any such fit persons refuse to take such Apprentices, they may be presented and indicted for the same at the Assises or Sessions

Dalt. cap. 40.

Sessions upon the Statute 43 *Eliz. cap.* 2. So may the childrens Parents if they refuse to part with them, not being able to bring them honestly up, or intice them away being bound. And if the children refuse to go to be Apprentices when ordered, they shall be sent to the House of Correction.

5. This putting forth to Apprentice must be by Indenture, not an agreement by words, and the Indenture must be between the Justices, Church-Wardens, and Overseers of the Poor for the time being, or the said Church-Wardens and Overseers, with the consent of the Justices, and the Apprentice on the one part, and him, or her (if a Feme Sole) that takes the Apprentice on the other part, Thus,

The

The form of an Indenture where a Child is put out by The Parish.

THis *Indenture made the Twenty fourth day of* August, *in the Twenty eighth Year of the Reign of our Soveraign Lord* Charles *the Second, King of* England, *&c. Anno Domini* 1676. *Witnesseth, that* W.D. *and* T.U. *Overseers of the Parish of* Cowden *in the County of* Kent, *and* I.S. *and* F.K. *Church-Wardens of the same Town, by and with the allowance and consent of Sir* I.R. *Knight, and* T.L. *Esq; Two of his Majesties Justices of Peace for the same County, have placed, and by these presents do place and bind* I.G. *being a poor Fatherless Child* [*or* I.G. *Son of* H.G. *of the said Parish of* C. *Labourer unable by reason of his Age and great Charge to maintain and bring up his said Son*] *as an Apprentice with, and to* G.M. *of* C. *aforesaid, Husbandman, and*

and as an Apprentice with him the said G. M. *to dwell from the day of the date of these presents, until he the said* I. G. *shall come to, and attain the Age of Twenty four Years* [*or if it be a Girle, the Age of Twenty one Years, or be Married, which shall first happen*] *according to the Statute in that Case made and provided, by and during all which time and term the said* I. G. *shall the said* G. M. *his Master well and faithfully serve in all such Lawful Business as the said* G. M. *shall put him the said* I. G. *upon, according to his power, wit, and ability, and honestly and obediently in all things shall behave himself towards the said* G. M. *his Children and Family, and the said* G. M. *for his part promiseth, covenanteth, and agreeth, that he the said* G. M. *the said* I. G. *in the Art and skill of Husbandry,* [*or what else his calling is*] *in the best manner that he can, or may, shall teach and inform, or cause to be taught or informed as much as thereunto belongeth, and he the said* G. M. *knoweth; and also during all the said term to find and allow unto his said Apprentice sufficient Meat, Drink, Linnen,*

nen, Woollen, Shoes, Stockings, Washing, Lodging, and all other things necessary or meet for such an Apprentice, In Witness whereof the said Parties first abovenamed to these present Indentures interchangeably their Hands and Seals have put, the Day and Year first above Written.

Let the Church-Wardens, Overseers and Apprentice Seal and Deliver one part to the Master, and the Master the other to them. And it may be convenient that the two Justices indorse a signification of their consent on the backside.

6. Money given to put out poor children Apprentices is to be employed by the Corporation, or Parson, Constables, Church-Wardens and Overseers accordingly on pain to forfeit every of them Five Marks, and the party taking money with such Apprentice shall give security by Bond, to repay it at the Seven Years end, or within Three Months after, or if the Apprentice Stat. 7. Jac. cap. 3.

prentice dye in the mean time, then within one Year after his death, ſo as the money may be employed for putting out of others.

7. *Note*, That an Apprentice cannot be diſcharged but by four Juſtices at leaſt in open Seſſions, or by agreement in Writing under his Maſters hand. And if the Maſter ſhall put the Prentice into Apparel, 'tis ſuch a gift in Law, that he ſhall take it away, if he afterwards part with the Prentice.

CHAP. II.

The Overſeers Duty in Relieving and ſetling the Poor, making Rates, &c.

THere are three kinds of poor people,

1. Poor by impotency, as Aged, Blind, diſtracted, *&c.*

2. Poor by caſualty, as maimed in

in their lawful callings, undone by Fire, &c.

3. Poor by Riot and Idleness, as Common Drunkards, Loiterers, Pilferers, &c.

The first of these are wholly to be provided for, the Second, that have strength of body but not sufficient means to maintain themselves, are to be set on work, and besides allowed some Relief proportionate to their necessities: But the third sort are to be sent to the house of Correction there to be held to hard Labour to maintain themselves without Charging the Town.

Fathers, Grandfathers, Mothers and Grandmothers being able, and also the Children and Grand Children in like manner of every poor Impotent person, shall relieve such poor Relations, as shall be assessed at Quarter Sessions, and forfeits Twenty shillings a month as long as he refuses: But it seems Bastard Children are not within the Law compellable to maintain their reputed parents, nor can the Justices compell any man to do it that lives out of their County. 43 Eliz. cap. 2.

If

ibid. If a poor man want a houſe the Overſeers by conſent of the Lord of the Mannor may erect a Cottage on the waſt, and lodge Inmates therein, notwithſtanding the *Stat.* 31. *Eliz. cap.* 7. They may likewiſe Licenſe their poor to beg within their own Pariſh, but not in the Highway; and any Inhabitant that ſerves or relieves at their door any but thoſe of their own Pariſh having ſuch Licenſe, forfeits Ten ſhillings a time for ſo doing.

St. Jac. cap. 7.

Rates, St. 43. Eliz. cap. 2. For enabling them ſo to relieve the helpleſs poor, theſe Officers or the greater part of them may raiſe Weekly or otherwiſe of every Parſon, Vicar and other Occupier of Land, Houſes, Tithes, Coal-mines or ſalable underwoods, *&c.* in their Pariſh, ſuch ſum as they ſhall judg fit and neceſſary, which Rate or Tax muſt be allowed by two Juſtices (one of the *Quorum*) and then by their warrant they may levy it by diſtreſs on the goods of ſuch as ſhall refuſe to pay it, or in default of goods the refuſer may be committed to priſon till it be paid.

But here note,

1. Theſe Rates are to be made according to mens viſible eſtates real and perſonal within the place only, not for any eſtate they may have elſewhere, and muſt be only on the Tenants or occupiers of Land, not on Landlords as ſuch.

2. All Lands are chargeable with theſe Rates, which are uſually ſet by the pound, and for ſtock and goods tis generally thought reaſonable to follow the proportion of Lands, that is to ſay, an Hundred pound ſtock to be rated at Five or Six pound a year in Land.

If any find themſelves aggrieved by any Tax they are to be relieved at the Quarter Seſſions.

Theſe Officers to preſerve their Pariſhes from an increaſe of charge are often much troubled about keeping out and ſettling poor people that would obtrude upon them, wherefore obſerve firſt,

1. That Forty days reſidence quietly in a Pariſh ſhall be accounted a Legal ſettlement, provided Sr. 14. Car. 2. cap. 14.

vided it be not brought about by practice.

2. If any ſtranger come into a Pariſh in any Tenement under Ten pounds a year, and refuſe to give ſecurity to diſcharge the Pariſh, any two Juſtices (*Quorum unus*) on complaint of the Church-Wardens or Overſeers within the Forty days, may ſend him to the place where he was laſt Legally ſettled: And if any find himſelf aggrieved by the Juſtices he may appeal to the Seſſions.

3. Yet any perſon may go abroad to work in Harveſt or other employment, with a Certificate from the Miniſter, one Church-Warden and one Overſeer, that he is in their Pariſh a ſettled inhabitant, and in ſuch Caſe if he fall impotent after he have been in a ſtrange place above Forty days, this ſhall be counted no ſettlement but he is to be returned to the firſt pariſh.

ibid. 4. Perſons refuſing to go, or not remaining in the Pariſh where they ought to be ſettled may be ſent by the Juſtices to the houſe of Correction.

5. *A*.

5. *A.* having Wife and Children takes an houſe in the Pariſh of *B.* for one year, during which time he is illegally turned out of poſſeſſion, then he takes a houſe in another Pariſh out of which he is put within two or three days, and wanting a place to ſhelter him, gets into a Barn, in a third place, where his Wife is delivered of another Child: In this caſe, they are all to be ſent to the Pariſh out of which they were firſt illegally forced. Reſolution of the Judges Sect. 24.

6. One born at *S.* left that place ten years; and lived in *T.* taking a houſe and paying rent there for two or three years, and afterwards left that place alſo for ſix or ſeven years, and then came to *W.* in another County, and there was twenty weeks at work, but becoming impotent did wander and beg, and being taken as a vagrant, it was ordered he ſhould be paſſed and ſetled at *S.* where he was born. Bul. Rep. 1. part. fo 357.

A. lives in a houſe at *B.* with his Children, but works in *C.* being hired there by the year: In this Caſe his Children are ſettled in *B.* not in *C.* in

C. in case of his death. If a Woman unmarried be hired in one Parish and there got with Child, and then goes into another Parish and is there setled in service or otherwise, for two or three Months, and then is found with Child and delivered, in this case she and her Child shall be settled in this parish where she is, not sent to the Parish where it was begot.

Resolut. Judg. Sect. 12.

Two next Justices may take order as well for the punishment of the mother of a Bastard Child, as also to compel the reputed Father to save harmless the Parish by allowing mony weekly, and to imprison him or her if that order be not performed, and for better discovery of the matter the Justices may examine the Mother her self upon oath concerning the reputed Father.

If *B.* have a Bastard Child by *M.* born in the Parish of *D.* six years since, and the reputed Father *M.* marries another Woman and they keep the Child the six years in another Parish called *N.* and the Mother of the Child continues all the while at service a single Woman, and

and then the reputed Father dies poor: In this caſe the Baſtard Child is to be ſent to the Mother firſt, if ſhe be able to maintain it, if not it muſt be kept by the Pariſh of *N.* where it was ſo many years ſettled with the Father.

Laſtly theſe Officers as well Church-Wardens, as Overſeers are to be aſſiſting to the Conſtables where they are required by ſome ſpecial Statutes, as for ſuppreſſing of Conventicles, for which ſee before in the title Conſtable: And within four days after their year ended and others Choſen, they are to make a true account to two Juſtices, of what mony they have received and diſburſed, what Wares they have in their hands or in the hands of any of the poor; what Prentices they have put out *&c.* And what is ſo remaining ſhall pay over to the new Overſeers; if they refuſe to account the Juſtices may ſend them to the Goal, if after they have accounted they refuſe or fail to pay over the mony in their hands to their ſucceſſors, the ſame may be levied on their goods by diſtreſs; and in default of

St. 43. Eliz. cap. 2. Dalt. cap. 40.

of ſuch diſtreſs the refuſer to be ſent to Goal there to remain till payment and delivery of ſuch Arrerages and Stock.

Directions for Surveyors of the Highways.

Surveyors, or rather ſupervifors of the Highways, or Way-Wardens as they call them in ſome Counties, are officers yearly appointed to look after the neceſſary reparation of the Highways within that Pariſh or precinct for which they ſerve.

St. 14. Car. 2. cap. 6. They are to be choſen on Munday or Tueſday in *Eaſter* week, by the Church-Wardens, Conſtables or Tithing men for the time being, with the advice of the Major part of the Inhabitants, and are to be two or more in number according to the greatneſs of the Pariſh, and being choſen muſt have notice thereof given them in writing by the Conſtables, *&c.* the next Sunday after.

2 & 3. P. & M. cap. 8. Immediately after ſuch notice they are

are to take this Office upon them on pain of forfeiting Twenty shillings; in the execution whereof note,

1. That they have to do with no ways, but the publick Highways, called in Latine *Viæ Regiæ*, the Kings Highways, for so says the Statute, Highways leading to Market Towns *&c.*

2. The Constables and Church-Wardens when they chuse Surveyors are to appoint six days between that and *Midsummer* to be set apart for amending the Highways, whereof next Sunday they are to give publick notice in the Church, and then the Surveyors are to see the same done and observed, that all Parishioners do their work those days in manner following.

1. Every one having a Ploughland (which is counted as much as one Plough may plough in a day) in Tillage or Pasture in the parish, or keeping there a Plough or Team, shall come forth with one Wain or Cart fit for carriage, provided with Tools, Oxen, Horses, *&c.*

according to the manner of the Country, and two able men who are to work in such manner as the Surveyor shall direct eight hours in every of these six days on pain of forfeiting Ten shillings for every default.

2. Every other Housholder, Cottager and Labourer in the Parish being able to work, and not a servant hired by the year, must come out himself or provide some able man to work all the six days on pain of forfeiting twelve pence for every default.

St. 18 Eliz. cap. 9. 3. Persons that have no Carts if they be in subsidy Five pounds in goods or Forty shillings in Lands, or above, must find two able men.

If the Surveyors shall think any of the ploughs or Carts needless any of the days, they may spare them, and in stead thereof require two able men who must come under pain of forfeiting twelve pence a man for every default.

Every

Every Parish is bound to repair their Highways, and if they be defective, may be indicted at the Common Law, wherefore if six days will not serve, the Surveyors may appoint more, and charge all persons chargeable to come to the work; and if he who is to send a Team neglect, he forfeits ten shillings, and the Labourer 18 pence for every day: But for all such days above six the Surveyor is to pay them, wherein if they cannot agree the next Justice out of the Parish is to determine it. Above 6. days. St. 14. Car. 2. cap 6.

Surveyors may take and carry away so much Rubbish and small broken Stones already digged out of any mans Quarry within the Parish without the owners leave as they shall think fit, or gather loose Stones in any mans ground, but may not without Leave dig for new Stones, nor take great Stones already digged: They may likewise dig for materials in probable places, as Sand, Stones, Gravel, *&c.* So as it be not in Houses, Gardens, Orchards, or Meadows of any man, nor may they make a Pit above ten yards in St 5. Eliz. cap. 31.

breadth or length, and they are to fill it up again at the Parish charge or forfeit Five Marks to the owner.

St. 14. Car. 2. cap. 6. If there be not sufficient in the same Parish, they may so dig in the next Parish, under the limitation aforesaid, without paying any thing for the said Sand, Gravel, &c. only damages for spoyling Grass by carriage.

St. 5. Eliz. cap. 15. Where any Watercourse shall be in any Ditch or Ditches of the Highways Annoying the same, it shall be lawful for the Surveyors to turn the same into any mans ground as shall seem most convenient.

ibid. et. St. 18. Eliz. cap. 10. Owners of Grounds adjoyning to the Highways, not keeping their Hedges low, and cutting down Trees and Bushes growing over the same ways, forfeit Ten shillings. And he that scours not his Ditches next adjoyning to the Ground that is next to the Highway, that the Water may pass the better out of the Highway; shall forfeit Twelve pence for every Rod.

Any person Scouring Ditches and throwing the soil into the Highway, or laying Dung there & suffering it to lie

lie there six Months, forfeits for every Load Twelve pence.

If the Surveyors neglect to present these offences within one month after they shall be committed, they forfeit for every default Forty shillings.

No hired travelling Wayn, Wagon, Cart or Carriage, (other than Carts imployed about Husbandry, and carrying home Harvest, or in his Majesties service) shall be drawn or go with above Seven Beasts, whereof Six shall go double or in pairs; nor with above Eight Oxen, or Six Oxen and two Horses, nor shall carry above two Thousand pound weight between *October* and *May*, nor above three Thousand pound weight between *May* and *October*, on pain of forfeiting Forty shillings, one part to the Surveyors, the other to the Overseers, and the third to the Prosecutor; to be levied by distress on the Cattel; and in Case the penalty be not paid within three days, to be sold, returning the overplus, charges of keeping and selling deducted. 14 Car. 2. cap. 6.

Surveyors of the High-ways within one Month after their Year is out, shall give a true account to the Parish or Hamlet at some publick meeting appointed for that purpose, of all moneys by him paid and received, and what moneys are in Arrear for Fines or Penalties. And what remains overplus in his hands he shall pay over to the next Surveyor. And if he refuse so to account the Justices may commit him.

In *London* the Scavengers seem to supply the places of Surveyors in some measure, whose Office consisting in keeping the Streets clean, carrying away dirt, *&c.* is partly settled by the Stat. of 14 *Car.* 2. *cap.*2. and partly by the custom of the City.

An Appendix concerning Bridges.

Stat. 22. H.8. cap. 5. Where a common Bridge is decay'd in the Kings High-way, and it cannot be known who, or what Lands are chargeable to repair the same, four Justices of the Peace (*Quorum unus*) may within their limits call

call before them the Constables, or two of the most honest Inhabitants of every Parish within their City, or Town Corporate wherein such Bridge is, and with their assents may Tax every Inhabitant such reasonable sumas they shall think convenient towards repairing such Bridge, and repairing the High-ways for three hundred foot next the ends of any such Bridge; which Tax must be particular, and not so much on a Hundred or Town, for then some few might be distrained upon for the whole.

The said Justices may appoint Collectors to gather such Taxes, and Surveyors to see the work done, both which Officers, and their Executors, and Administrators shall truly account to the Justices, or be proceeded against at the General Sessions.

If a Bridge be wholly in a City or Town Corporate, such City or Town must repair it, if it be out of any such City or Town, the whole County by common right is to repair it; and if part of a Bridge be in one County, and part in another, both shall contribute so far as it is in

their limits respectively.

Crompt. 186. Such as are chargeable to repair a Bridge may enter on any other mans Ground adjoyning, and lay their materials there, and the Owner shall have no Action, because it is *in Commune bonum*, for a common advantage.

14 Car. 2. cap. 6. All Bridges shall have sufficient Walls or Posts, and Rails on each side four foot high at least, from time to time, to be kept sufficiently repaired.

As a Corollary to the whole we shall briefly set down the chief Duties required by our Law, of Ministers, Parish Clerks, Treasurers of the County Stock, Governours of Fairs, &c.

And first, of the Parson or Curate.

Not to meddle with his Function as 'tis Spiritual, he is besides,

To

To Register the Testimonial of every Servant at his going from his Service, for which he may take two pence.

He is to be present to aid the Constable when Rogues are whip'd, to Register the same, and send a Testimonial with them afterwards, on pain of Five shillings for every default.

He hath power to License any to eat flesh on days prohibited in the time of their sickness, and for Registring the same in the Church Book, he is to have four pence, *&c.*

Parish Clerks.

A Parish Clerk is a Lay Officer of a Parish whose duty is to attend upon the Minister and Church-Wardens about holy things.

He is to be chosen according to the custom of the place, if usually the Parish have chosen him such election is good, notwithstanding any Canon, and therefore in such case if the Minister of the Parish, and the Bishop or Chancellor of the Dioceſs chuſe another, the first shall stand. Hughs Rep. 163 Candit and Plom. Case.

March. Rep. 107. The Parson of a Parish cannot put a Clerk so chosen out of his place, without just cause, nor interrupt him; if he do, he may have an Action against him, as any other man that is disturbed in any Law Office.

His Office consists chiefly in setting the Bread, Wine, and Cups decently on the Communion Table, providing Water for Christening in the Font, making clean the Church, putting the Bible and Common-Prayer Book in their places for the Minister, reading the peoples part of the publick Prayers, beginning the Psalm, Ringing the Bells, *&c.*

If any Parishioners withhold his Wages, he may be relieved by Warrant from two Justices of Peace, who may order payment, and in default order distress as hath been by some affirmed. But *Quere* now, for we suppose he must proceed according to the custom of the place.

Treasurers of the County Stock.

These Officers are appointed by the Sessions, and ought by the Statute to be subsidy Men of Ten pound a Year Lands, or considerable personal Estate, and are annually changed.

The Justices in Quarter Sessions charge every Parish so much towards relief of maimed Souldiers and Mariners, or of the Prisoners in the Kings Bench and Marshalseas, which being assessed by the Parishioners amongst themselves, the Constables and Church-Wardens are to levy it, and pay it to the High Constable, who must deliver it to these Treasurers, who out of it are to relieve such maimed Souldiers and Mariners, and give a just account to the succeeding Treasurers. see St. 43. Eliz. cap. 3. and 14. Car. 2. cap. 9.

Gover-

Governours of Fairs and Markets.

They must appoint a Toll keeper to attend from Ten a Clock in the Forenoon till Sunset, on pain of Forty shillings for every default on every Fair or Market day.

Such Toll keeper may take due and lawful Toll for every Horse, Mare, &c. And the parties to every bargain or exchange must be present at taking such Toll, and also the said Horse, Mare, &c. And the Toll keeper must Write down the Names, Surnames and dwelling places of all the said parties and the colour and mark of the said Horse, Mare, &c. on pain of Forty shillings.

31 Eliz. cap. 12. And if the seller be unknown to such Toll keeper, he is to bring one credible Person that is well known to him to vouch his knowledge of the seller, whose names are both to be entred with the marks & price of the Horse or Mare, of which the buyer may if he please have a note subscribed with the Toll keepers hand, paying for

for the same two pence: Every Toll keeper suffering such sale without such voucher, and every voucher giving false testimony forfeits Five pounds, and the sale to be void.

If a Horse stoln be legally sold with vouchers, the owner may redeem him within six months after stealing, proving the Horse to be his and repaying what the buyer shall swear before a Justice he paid for him; but if he be not sold openly in market overt, and Toll'd and vouched, the owner may seize or Replevin him wherever he finds him.

THE

THE OFFICE AND DUTY OF A *London Conſtable.*

THough the Office of Conſtables in *London* be of the ſame nature, and directed by the ſame Statutes we have recited under theſe veral heads of their Duty: Yet ſince there is ſome variation not only in the manner of their Election, but likewiſe in the form of their Oath, as it is uſually Adminiſtred; We ſhall here (becauſe nothing of it is yet extant in any treatiſe of this nature) treat.

treat briefly of a *London* Constable, not intending to repeat all the aforesaid Branches of his Office in common with others throughout the Realm, but set down only some particularities wherein by Custom they differ, or to which by Acts of common Council, *&c.* he is specially obliged.

1. No man can be a Constable in *London* unless he be a Freeman of the said City; and whoever is so is obliged to put up the Kings and City Arms over his door, or if he live in an Alley, at the end thereof to the Street, to signifie a Constable lives there.

2. The whole City being divided into Twenty six Wards, every Ward is Subdivided into so many precincts, each of which has its proper Constable.

3. The manner of making Constables here is thus: The Parish or Precinct present or nominate some of their Inhabitants as fit for this Office in the Vestry, then at the Wardmote, which is always held on Saint *Thomas*'s day, the person so presented is either confirmed, or for some good reasons

Calthrops Rep. p. 129.

reasons gets off, and another is appointed in his stead, so that the election of Constables may properly be said to be in the Wardmote, and then such persons so ratified in the several Wardmotes for the whole City are to appear at the general Court of Aldermen to be holden in *Guildhall* on the Munday next after the Feast of the *Epiphany* (or *Twelfth* day as tis usually called) next coming, where they are sworn.

The form of the Oath there administred to them being as follows.

YOU shall swear that ye shall keep the Peace of our Sovereign Lord the King well and lawfully to your power: and you shall Arrest all them that make Contest, Riot, Debate or Affray in breaking of the said Peace, and lead them to the house or Counter of one of the Sheriffs, and if ye be withstood by strength of misdoers, ye shall rear on them an outcry, and pursue them from street to street, and from Ward to Ward till they be arrested.

ed: And ye ſhall ſearch at all times (when ye be required by the Scavengers or Beadles) the common noyſance of your Ward, and the Beadle and Raker you ſhall help to rear and gather their ſalary and Quarterage, if ye be thereunto by them required: And if any thing be done within your Ward againſt the Ordinance of this City, ſuch defaults as ye ſhall find there done, ye ſhall then preſent to the Major and Miniſters of the City. And if ye be letted by any perſon or perſons that ye may not duly do your Office, ye ſhall certifie the Major and Common Council of the City, of the name or names of him or them that ſo let you.

Ye ſhall alſo ſwear, that during the time that ye ſhall ſtand in the Office, and occupy the room of a Conſtable, ye ſhall, once at the leaſt in every Month certifie and ſhew to one of the Clerks of the Majors Court, and in the ſame Court, as well the Names, as Surnames of all Freemen which ye ſhall know to be deceaſed within the Pariſh wherein ye be inhabited, as alſo the names and Surnames of all the Children of the ſaid Freemen ſo deceaſed, being

ing Orphans of this City. And thus you shall not leave to do, as God you help.

4. It hath sometimes been practiced to admit persons nominated for Constables to Fine themselves off, but this seems rather by Connivance or favour for some particular reason than *De Jure*. But it is frequently allowed that the person chosen may hire a Deputy (fit and duly qualified for that purpose) to execute and serve the Office for him, and in that case such Deputy is to be sworn and must answer for defaults as aforesaid.

5. Though Constables in *London*, are chosen every one by and for some particular Precinct, yet he has power to serve Warrants and execute his Office throughout the whole City if required.

6. Therefore as to Watching a Nights at the Gates, *&c.* There are in every Ward so many Watchmen ordered by Act of common Council. And by Custom all the Constables in each Ward attend successively one every Night according to his turn,

to

to go the Rounds, and look after all other things belonging to his Office.

7. *Note*, Watching being a personal duty, every man is to serve therein, and the Constable and Beadle ought every Night to warn in so many of his precinct as he ought to have, and, 'tis said, may insist upon a Mans coming forth in his own person, without very just cause shewed to the contrary. But commonly for those that do not appear themselves, the Constable hires men, whom the said parties respectively must pay by the Quarter, or otherwise six pence a Night more or less according to custom; and if they refuse the Lord Major will compel them.

8. By the Articles of the Ward-mote-Inquests it appears that every Constable is from time to time to certifie to such Inquest, the Name, Surname, dwelling place, profession and Trade of every person who shall newly come to dwell within his precinct, that they may keep their Roll perfect. And therefore the Constable is to make and keep a perfect Roll in like manner. As also once a Month

Dalt. Rep. 138.

Month to ſearch and inquire what perſons be newly come there to lodge or ſojourn. And if he find by their own confeſſion, or by the Record of any of the Books of any Alderman of the City, that ſuch new comers are indicted, or caſt out of any other Ward for evil and noyous life, and will not find Sureties for their good Abearance, both they and their Landlords, or receivers are to be warned that they depart, and if they refuſe, they may be impriſoned, and their Landlords Fined as much as he was to have by the Year for ſuch Houſe or Room.

Act of Comm. Counc. Anno. 30 H.8.

If any perſons in great Rains, or other times, ſweep the Soilage or Filth of their Houſes into the Channel, and the ſame is after conveyed to the *Thames*, every perſon ſo offending ſhall forfeit Twenty pence, and upon complaint made to any Conſtable next adjoyning it ſhall be lawful for him to diſtrain for ſuch forfeiture; and the like penalty to be paid by every perſon that burns Ruſhes or Straw in his Houſe, or that waſhes in the common Streets or Lanes, the one moity to the Major

jor and Commonalty, the other to be divided between the ſaid Conſtable, and the party finder of the ſaid default, and every Conſtable refuſing or neglecting his duty herein forfeits for every default Three ſhillings four pence.

Anciently the Citizens of *London* had a Houſe called the *Tun* in *Cornhil*, whereunto the Conſtables, Beadles and other Officers were to bring Treſpaſſors againſt the Peace, and perſons found in Adultery, Fornication, or under ſuſpicion thereof. But now the *Counters* and *Bridewell* are appointed receptacles for ſuch offenders.

'Tis ſaid that a Conſtable by the cuſtom of *London* taking any perſon upon his Watch abroad after Ten a Clock at Night, may ſend them to the Counter till Morning (which will coſt them at leaſt a dozen ſhillings) But this ſeems *durus ſermo*, part of *ſummum jus*, which equity counts *ſummam injuriam*, where there is no breach of the Peace or other offence committed. This is certain, that as a Conſtable ought not to betray his truſt, debaſe the Kings Authority

Authority committed to him, nor neglect his duty in examining, suppressing and securing, all dangerous, unruly persons, or such as by reasonable probabilities appear suspicious, and guilty of ill designs; so ought he by no means on the other side, to wreck a private grudge, or gratifie a vain itch in himself of shewing his power to the utmost, for then he oftentimes goes beyond it; and thereby some pragmatical men in Office, have involved themselves in after troubles. And though we have herein before particularly declared our sentiment touching a Constables discharging a verbal commitment upon good cause after appearing, somewhat contrary to the vulgar conceit, yet we would not have any Officer run an hazard on our single private opinion in a controverted point, but rather advise him to this safe and sober course: To examine the party with deliberation, and hear the whole matter without passion, before he pronounce any positive words or order of Commitment, and then if he find just grounds for the same, to send him away to rights without

without hearkening to any after-parley or intreaties, or if he do, That then he take a General Releaſe from the party for his ſecurity againſt any Action of falſe impriſonment that may happen to be brought.

Nimia Cautela non nocet.

FINIS.

UMI